

APPENDIX

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

No. 324

NORFOLK AND WESTERN RAILWAY COMPANY and
WABASH RAILROAD COMPANY, *Appellants*,

v.

MISSOURI STATE TAX COMMISSION; HUNTER PHILLIPS;
HOWARD L. LOVE; J. RALPH HUTCHINSON, Members of
the Missouri State Tax Commission, and J. R. TOWSON,
Secretary of the Missouri State Tax Commission,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

Notice of Appeal Filed—May 9, 1967

Probable Jurisdiction Noted—October 9, 1967

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TABLE OF CONTENTS OF APPENDIX

	Page
Docket Entries	1
Transcript Before Missouri State Tax Commission	3
Findings of Fact, Conclusions of Law and Decision of the Missouri State Tax Commission	52
Petition for Review of an Order of the Missouri State Tax Commission (In the Circuit Court of Cole County, Missouri)	58
Judgment of the Circuit Court of Cole County, Missouri	66
Judgment of the Supreme Court of Missouri	68
Opinion of the Supreme Court of Missouri	69

	Page
Appellant's Exhibits Before the Missouri State Tax Commission	
Exhibit 5	87
Exhibit 6	88
Exhibit 9	89
Exhibit 11	90
Exhibit 12	91
Exhibit 13	92
Exhibit 14	93
Exhibit 17	95
Exhibit 18	96
Exhibit 19	97
Exhibit 23	98
Exhibit 24	99
Exhibit 25	100
Exhibit 26	101
Exhibit 27	102
Exhibit 28	103
Exhibit 29	104

APPENDIX

Docket Entries

1966	Bank or Div.	Book	Page
Jan. 14—Notice of appeal filed.	Bc	23	495
Mar. 17—Transcript of record filed and record of hearing before State Tax Commission filed, and exhibits deposited.	Bc	23	569
June 6—Assigned to Division One.	Bc	24	46
Aug. 8—Appellants' brief, showing service, filed.	I	17	354
Sept. 12—Respondent's brief, showing service, filed.	I	17	374
Sept. 17—Appellants' reply brief, showing service, filed.	I	17	387
Sept. 23—Argued and submitted.	I	17	393
Dec. 30—AFFIRMED. Henley and Hyde, J.J., and Storeckman, Alt. J., concur., Holman, P.J. not sitting. <i>Opinion by Higgins, C.</i>	I	17	456

1967

Banc or Div.	Book	Page
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| Jan. 13—Motion of appellants for rehearing or, in the alternative, for transfer to Court en Banc, with suggestions in support thereof, filed with service shown. | I | 17 | 471 |
| Jan. 26—Respondents' suggestions in opposition to appellants' motion for rehearing or in the alternative for transfer to Court en Banc, filed with service shown. | I | 17 | 487 |
| Feb. 13—Motion of appellants for rehearing or, in the alternative, for transfer to Court en Banc overruled. | I | 17 | 494 |
| Feb. 21—Motion of appellants to stay the mandate filed and sustained. | I | 17 | 496 |
| May 9—Appellants' Notice of Appeal to the Supreme Court of the United States filed with service shown. | I | 17 | 565 |
| Oct. 17—Order noting probable jurisdiction filed by the Supreme Court of the United States. | I | 18 | 20 |

Transcript of Proceedings**STATE TAX COMMISSION OF MISSOURI**

In the matter of the 1965 ad valorem tax assessment
of the NORFOLK AND WESTERN RAILWAY COMPANY.

June 15 and June 23, 1965
Commission's Offices
Room 501, Jefferson Building
Jefferson City, Missouri

BEFORE:

HUNTER PHILLIPS, Chairman, HOWARD L. LOVE,
J. RALPH HUTCHINSON, *Members.*

APPEARANCES:

ARNOLD BRANNOCK, Attorney, State Tax Commission,
Jefferson City, Missouri,

For the State Tax Commission.

SHOOK, HARDY, OTTMAN, MITCHELL and BACON,
Attorneys at Law, 915 Grand Avenue, Kansas
City, Missouri, by Charles L. Bacon and Frederick
Beihl; and

JOHN F. MCCARTNEY, Tax Attorney, Norfolk and
Western, St. Louis, Missouri,

*For the Norfolk and Western
Railway Company.*

[Tr. 7]

BE IT REMEMBERED, that at a continued hearing of the State Tax Commission, held on June 23, 1965, at the place set forth in the title page hereof, the Commission and Counsel appearing as before, and in addition John H. Denman, Assistant Attorney General, Jefferson City, Missouri, appeared as an observer, and the following proceedings were had:

[Tr. 7]

MR. BACON:

[Tr. 8]

At this time, we have submitted to the Chairman and to Counsel for the Commission a proposed Stipulation for consideration to see if this could be executed and filed as a part of the record.

MR. BRANNOCK: The Commission has considered the Stipulation and is agreeable to the contents thereof, and has authorized me to execute it.

[Tr. 8]

MR. BACON: I think at this time we will file the Stipulation.

MR. BRANNOCK: Let it become a part of the record.

MR. BACON: So it becomes a part of the record proper.

So your record will show it is filed and becomes a part of the record by agreement of the parties?

MR. BRANNOCK: That is agreeable.

(Said Stipulation is as follows:)

STIPULATION

"It is stipulated and agreed that this proceeding is a contested case within the meaning of the Administrative Procedure Act of Missouri and, having been properly commenced, the parties hereto waive all requirements as to notice and time and place of this hearing; that [Tr. 9] the Norfolk and Western Railway Company is incorporated under the laws of the Commonwealth of Virginia with

its principal office and place of business in Roanoke, Virginia; that the Wabash Railroad Company is incorporated under the laws of Ohio with its principal offices and places of business in Wilmington, Delaware, and Philadelphia, Pennsylvania; that Norfolk and Western Railway Company owns no track or roadbed within Missouri but leases all of the track and roadbed owned by Wabash Railroad Company in Missouri, and elsewhere, together with all the rolling stock owned by Wabash Railroad Company, all pursuant to Lease dated March 1, 1961, as amended by Amendment dated as of October 1, 1964, effective as of October 16, 1964.

"It is stipulated that the State Tax Commission of Missouri, in arriving at the assessed value of the rolling stock in this case for the year 1965, used the depreciated value of all rolling stock and movable property owned or leased by Norfolk and Western as of January 1, 1965, wherever situated, in the amount of \$513,309,877; that in this case as in all other railroad assessments, the depreciated value was determined by taking the original cost of the equipment by year of acquisition and allowing 5% depreciation per year, but with a maximum allowable [Tr. 10] depreciation of 75% of original cost; that in this case as in the case of all railroad assessments for the year 1965, a factor of 47% was applied by the State Tax Commission resulting in this case in the figure of \$241,255,643; that the track formula was then applied; 8.2824% of all of the main and branch line tracks everywhere which were leased, owned, or controlled by Norfolk and Western was within Missouri, and this percentage of the above value of the depreciated rolling stock was determined to be \$19,981,757 and was by the Commission stated to be the value of the rolling stock properly taxable in Missouri; that from the total value of the fixed property assessed in Missouri at \$12,177,597, which property was owned by the Wabash Railroad Company and leased to Norfolk and Western, and the above assessed

value of the rolling stock, the sum of \$860,415 was deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts; and that as the result of the above method of assessment and computation, a total assessed valuation was made of \$31,298,939.

/s/ W. ARNOLD BRANNOCK
Attorney for State Tax Commission

/s/ CHARLES L. BACON
*Attorney for Norfolk and Western
 Railway Company and Wabash Railroad Company*

[Tr. 11]

Dated: June 23, 1965"

FILED: June 23, 1965 M.S.B.

[Tr. 23]

MR. BACON: Mr. Chairman and Gentlemen, if I might just for a minute or two tell you what we want to bring before [Tr. 24] you today for your consideration.

Of course, our basic position in general terms is set forth in the writing which we have heretofore filed, so I see no reason to report or go again into that which we have filed and which has been presented to the Commission.

Of course, basic to the problem is the fact that because a lease was signed on October 16, the Commission instead of dealing with a \$82 million depreciated value—I am using round numbers—of Wabash, as of January 1, 1965, you are dealing with \$513 million depreciated value as of that date, under the interpretation that the Commission has given to the so-called leasing statute of the taxing statute, and applying the track formula as it is set forth in the statute.

We will have evidence to show you that there has been no appreciable change whatsoever in the Wabash operations in Missouri, that the flow of traffic and the volume of traffic over the road has not increased, that the per-

centage or the value of rolling stock in Missouri, the lease has not affected that in any appreciable manner whatsoever.

Our position is that when you apply the track formula without adjusting further, that under our peculiar and unusual and unique facts, you come up with an assessed value which is so far away and above the depreciated value of that portion of rolling stock which is in Missouri, that you come up with a result which, in effect, amounts to a violation of the due [Tr. 25] process laws, a violation of the commerce clause, both of the United States Supreme Court, and the due process of the federal and state Constitutions.

It has the effect, when you apply that track formula, of reaching out and bringing into Missouri property and subjecting it to tax which has no proper tax situs in Missouri, because of the interpretation of the lease. So fundamental to our approach to this thing is this tremendously shocking difference. The evidence will show that on your worksheet the figure of \$19,981,000 plus was assigned as the depreciated value of the rolling stock after the factor was applied. Our evidence will be that this is far and above the depreciated value of the Wabash property. It will be far and above the depreciated value of the actual units which were in Missouri on January 1, 1965.

I would like for the Commission to know that we have gone to every length to come before you here today with some results of studies which will show this figure.

Now, it is our position that when you apply the track formula without adjusting it down to where you bring the figure more to where it has at least a reasonable relationship, to the depreciated value of the actual property in Missouri, that is when you run into your constitutional questions of due process of the commerce laws, and where you, in effect, are attempting to establish a tax situs in Missouri for property [Tr. 26] that never gets to Missouri.

We further take the position that the word lease or leased in the taxing statute of railroads was never intended to cover or apply to a situation like ours, but that it was put in there to plug the gaps for the railroads, I mean on cars that they might have that the State wasn't getting any value on; that it was never intended legislatively to apply to a situation like this, where the great bulk, because of the unique operations of the N & W and the Nickel Plate, operating in that coal region, shuttling back and forth from the mountains to Norfolk, that it never was intended to apply to the kind of a situation we have here, where the traffic pattern in the Wabash Railroad—we will have evidence for you as to the exact change, if any, that has taken place. We will have evidence for you that after the lease, well even before the lease, it was never contemplated that there would be any change in the flow of traffic over the Wabash lines in Missouri, or that you would be bringing these 45,000 hopper cars that are used in the coal fields here into Missouri in great bulk.

We take the position, therefore, that when you apply that lease statute to our factual situation, that that, in turn, brings you, if you are going to apply the track formula alone, to the result which we have here and which we say is clearly not only unfair and inequitable, but that it is a violation of the Constitutions of the United States and of the State of [Tr. 27] Missouri.

We want to show you the operations of these roads. We want to show you how they are, the different business that they handle. We want to show you what has happened in Missouri before and after this lease. We want to show you what the value, or the tax assessed value would have been on January 1 as of the old Wabash road operating practically like it did before, certainly as far as the flow of traffic and volume is concerned. We want to show you what that would have been for comparison with what your track formula results in.

Now, I don't want to go into great detail here, but, basically, that is the evidence we want to bring to you today. And when you see what happens when you apply this track formula to our facts and with no change in the operation of the road in Missouri, as far as your flow and your volume, and so on, is concerned, any appreciable change whatsoever, I can't help but believe that the Commission will feel that under these facts that the result is a violation of constitutional rights. I think that the Commission will feel that under these facts that they should look for further adjustments which will bring the assessed value down from that which is arrived at applying the track formula to some reasonable relationship with the value of the rolling stock that was actually in Missouri on tax date and during the year.

Now, generally speaking, that is what we want to give [Tr. 28] to you. We have worked extremely hard to try to simplify these studies that we have made so they can be brought in and put before you for your consideration and for your evaluation as to the overall result.

I think there is nothing more for me to say in a preliminary way.

MR. BRANNOCK: I might state the position of the Commission. We are attempting to administer Chapter 151 of the Revised Statutes of Missouri, which provides that we shall assess all railroad property as of the first of January of each year, and which also sets forth the formula of trackage, as stated by Mr. Bacon. His statement of the law, I believe, is correct. He is complaining that the application is costing his client too much money. However, the law is as passed by the Legislature and all this Commission can do is to administer the law as it is written.

The fact that these other exhibits may be offered, and the fact that it results in increased taxation to a company that is just entering Missouri and has never been in Missouri before, we believe is immaterial, and that

the Commission will object to any such offers made on the fact that it allegedly puts a burden on this new company coming into Missouri for the first time.

[Tr. 33]

E. W. NIXON,
being sworn, testified as follows:

DIRECT EXAMINATION

by Mr. Bacon:

Q. Would you please state your full name for the record?

A. E. W. Nixon.

Q. Where do you live, Mr. Nixon?

A. At Roanoke, Virginia.

Q. By whom are you employed?

A. By the Norfolk and Western Railway Company.

Q. How long have you been employed by the Norfolk and Western Railway?

A. Since January 1, 1965.

Q. What is your present title and what are your present duties with the Norfolk and Western?

[Tr. 34] A. I am the Assistant General Manager of the Transportation of the Norfolk and Western, and in that capacity I have responsibility for the coordination of schedules, services, and train operations for the acquisition of equipment, freight cars, locomotives, and for the distribution and control of that equipment over the entire new operation of the Norfolk and Western.

Q. Before you were with Norfolk and Western, by whom were you employed?

A. By the Wabash Railroad Company.

Q. When did you go with the Wabash?

A. In 1935.

[Tr. 43]

Q. (by Mr. Bacon) Now, Mr. Nixon, because of what you are going to testify to about the operations of the

components — when I say “components” I mean the Wabash and the Nickel Plate and the old N & W—I think it is important for the Commission to know what the reason was for N & W, which had all of the coal moving down from the mountainous regions to Norfolk and back up to the Lakes and to the eastern industrial areas—

MR. BRANNOCK: (Interposing) That is objected to as wholly immaterial.

MR. BACON: Excuse me. Shall I wait for the ruling?

CHAIRMAN PHILLIPS: We will sustain that objection. I think it is wholly irrelevant, unless you tie it in to something.

MR. BACON: I hadn't asked my question yet. [Tr. 44] I was giving some background. I can ask him specific questions and let objections be made on each one.

The question I was going to ask was—the reason why the N & W wanted to lease the Wabash Railroad.

MR. BRANNOCK: That would be wholly immaterial. The material fact here and the ultimate fact is that they did lease it and that they had it under such lease on January 1, 1965. Why they did it is not material.

MR. BACON: May we proceed?

MR. BRANNOCK: On that, that is so immaterial that I would stand on that, as far as I am concerned.

How does the Commission feel about it?

CHAIRMAN PHILLIPS: It is sustained.

MR. BACON: All right. May I make an offer of proof then?

CHAIRMAN PHILLIPS: You may.

MR. BRANNOCK: You may make an offer of proof.

MR. BACON: It is my purpose to ask this witness, Mr. Nixon, the question as to the reason back of the N & W wanting to lease the Wabash Railroad, why they leased the Wabash lines and the equipment, in view of the fact that they were a big coal-hauling road in the East. Objection has been made. This becomes very important to the overall picture which we want to give [Tr. 45] to the Commission

of the fact that the Wabash Railroad had a different type of merchandise hauling from the N & W, that the N & W was a big coal-hauling road in the East, operating to the Tidewater and to the Lake area and to the eastern industrial area, primarily, and we are leading to the point that there was no contemplation or intent of tying the Wabash Railroad's lines into a lengthening of the N & W lines for the purpose of transcontinental hauls, that it was wanted because it was a profitable operation, because at one place there was a paralleling of lines between the old Nickel Plate and the Wabash, so that there could be a savings there insofar as doing away with duplication of effort and the roads there were highly competitive, and that could be done away with.

We want to show this further reason, we want to get completely into the record the different operational situations between the Wabash Railroad and the rest of the roads that make up the N & W operational procedure.

MR. BRANNOCK: Mr. Bacon, it seems to me that you are unnecessarily cluttering this record to put in such wholly immaterial things, even as an offer of proof, and we would appreciate it if you would make your offers of proof as concise as possible. Why you did these things has nothing to do with the taxes as [Tr. 46] of January 1, 1965.

MR. BACON: Mr. Brannock, the point is that the—

MR. BRANNOCK: (Interposing) I am sorry I brought on another statement.

MR. BACON: The point is that is most important for anybody considering the basis on which we are here complaining, to have all of this material in front of them.

CHAIRMAN PHILLIPS: Proceed, Mr. Bacon.

MR. BACON: Where do we stand?

CHAIRMAN PHILLIPS: We are to here to hear the case of Norfolk and Western.

MR. BACON: I meant on the record.

MR. BRANNOCK: I think it is time to ask your next question—being as you asked me.

MR. BACON: I asked the reporter where we stand on the record.

MR. BRANNOCK: Let it be understood that I object to any testimony with regard to anything other than the fact that the lease became effective October 16, 1964, and I will not make specific objections, but with the understanding that my objection follows to any such offers.

MR. BACON: All right, sir.

CHAIRMAN PHILLIPS: We will let it in the record for what it is worth.

MR. BACON: I would add to my offer of proof, [Tr. 47] that if Mr. Nixon had been permitted to testify he would have testified to the facts——

CHAIRMAN PHILLIPS: Let's let Mr. Nixon testify. We said we would let him testify.

MR. BACON: Oh, we are going to go back and start over?

MR. BRANNOCK: No.

CHAIRMAN PHILLIPS: Let him testify for what it is worth. Go ahead with your witness. Let him testify.

MR. BACON: You want me to back up before we made the offer of proof, or to take it after that?

MR. BRANNOCK: All I was trying to do was to keep from making continuous objections.

MR. BACON: From now on?

MR. BRANNOCK: That it is understood that I object to all of this line of testimony.

CHAIRMAN PHILLIPS: Proceed to interrogate your witness.

Q. (by Mr. Bacon) As you worked to put together this leasing arrangement, did the committee contemplate any operational change as far as the Wabash Railroad was concerned?

A. No, sir.

Q. Was it contemplated by this committee that the volume of business handled in Missouri would be increased as a result of this lease to Norfolk and Western?

[Tr. 48] A. No, sir.

Q. Insofar as the coal hauls of the N&W were concerned, was it contemplated that there would be any change in that operation in the Appalachian and Pocahontas areas?

A. No, sir.

Q. By the way, let's get straight what we are talking about when we are talking about regions of the railroad. Operationalwise, you have what you call the Atlantic Region, is that correct?

A. Right.

Q. What does that encompass generally, I don't mean in detail, just the area?

A. That encompasses the area east of Bluefield, Virginia, and Bluefield, Virginia is in the heart of the coal fields at the top of the Allegheny Mountains.

Q. Is any part of that area encompassed in Missouri?

A. No, sir.

Q. What do you call the Pocahontas Area?

A. The Pocahontas Area is that part of the system that runs from Bluefield, Virginia to Cincinnati, Ohio, and to Sandusky, Ohio.

Q. Is any part of that region encompassed in Missouri?

A. No, sir.

Q. Where is the Lake Region?

A. The Lake Region is that part of the line between [Tr. 49] Frankfort, Indiana, Fort Wayne, Indiana, Toledo, Ohio, Buffalo, New York, and Collinsville, Pennsylvania.

Q. What do you call the Western Region?

A. The Western Region is from Detroit, Michigan through Fort Wayne, down to Decatur, Illinois, and from Montpelier, Ohio across to Chicago, and from Chicago down to Decatur, and from Frankfort to St. Louis, and from Decatur west to Hannibal and southwest to St. Louis, and all of the tracks in Missouri and Iowa.

Q. In other words, Missouri is a portion of the so-called Western Region that you now use for operational purposes?

A. Yes, sir.

Q. All right, sir. Now, operationwise and businesswise, Mr. Nixon, I am talking now about after October 16, what change, if any, has taken place as far as Missouri is concerned and the old Wabash lines?

A. Well, the only change in the operations has been in the movement of a few cars that formerly were, prior to the lease of the Wabash, routed both over the Nickel Plate and the Wabash with connection at East St. Louis, Illinois. And on those cars where the cars were formerly routed over the Nickel Plate and Wabash, now we would handle those cars through Hannibal, Missouri instead of through St. Louis, for purposes of expediting the movement of the cars. This is a very, very small amount of traffic.

[Tr. 50] Q. To boil it down, if I understand it correctly, the only change that has taken place is that cars moving east on the Wabash lines from Kansas City and going on up northeast now go through Hannibal rather than St. Louis?

A. That's correct.

[Tr. 56] Q. All right, sir. Now, Mr. Nixon, I want you as succinctly as you can to describe for the Commission the operations of the N & W as they existed before the lease and as they exist after the lease.

A. The Norfolk and Western Railway has a very unique [Tr. 57] operation insofar as railroads go. The character of their traffic was unusual in that such a great percentage of it was in coal traffic moving from the coal mines of Virginia, West Virginia and Kentucky to the seaboard, which is called Tidewater down there, and also to Columbus and Cincinnati, Ohio, on the west. This railroad loads more coal, has more coal loaded on its own line than any other railroad in the United States.

Furthermore, on October 16, 1964, coal traffic consisted of 70 percent of their total revenues. This was

unique and no other railroad in the United States had that kind of experience. Other railroads served these same coal fields, notably the C & O Railroad, but they have tracks that go into Chicago and go into Detroit, and into Buffalo and Toledo, and therefore they have other types of traffic to supplement their coal traffic.

A great proportion of this coal traffic, this big volume of coal traffic on the Norfolk and Western Railroad moves from the coal mines in the Allegheny Mountain area, which is around Bluefield, Virginia, down to Tidewater, and is loaded on boats there for trans-shipping either to public utilities or to industries along the coast, or to foreign countries.

Q. Did the demand for equipment in the area which you have described of Virginia and the Tidewater area, and the eastern centers, make it necessary and does it now make it [Tr. 58] necessary for you to exercise any particular degree of control over the location and use of your hopper cars?

A. I don't think there is anything more important on the operation of the Norfolk and Western than to control the utilization of these coal cars, because they load as high as—well, they have loaded as high as 5,500 cars, average around 4,800 cars of coal a day in these coal mines served on the old Norfolk and Western, and if there is no coal there, no coal cars there, the coal companies usually have mines on other railroads, and if they don't have the equipment to load there, they will load it on some other railroad because in many cases the coal is loaded very shortly after the time it is loaded at the mine.

So for this reason the distribution and the control of coal cars is one of the most important phases of the old N & W's operation.

Q. Just for the record, would you explain to us what you mean when you use the term hopper car?

A. Well, hopper car is an open top coal car with the dump bottom in it, which is the way that, by far, the greater majority of coal is handled, and in our particular railroad I would say it is the way that about 95 or 97 percent of the coal is handled, in these hopper cars.

Q. In order to assist you in the control of your hopper cars, did the Association of American Railroads issue any [Tr. 59] particular orders?

A. Yes, sir.

Q. I hand you that which has been marked Taxpayer's Exhibit 6, and I will ask you to state what that is.

A. This is the Association of American Railroad's Special Car Order No. C-411 - Revised.

Q. I notice that this particular exhibit is dated June 8—or 3, I can't tell which it is— of 1965; was this order that you are referring to dated as of June, 1965?

A. No, this is a revision of the original order. The original order has been in effect approximately forty years.

Q. Mr. Nixon, before we go any further in discussing this exhibit, this is a copy of the order issued by the Association of American Railroads?

A. Yes, sir.

Q. And that is issued by that Association under the authority of the ICC?

A. That is correct.

MR. BACON: We now offer in evidence, before any further explanation, Exhibit 6.

MR. BRANNOCK: It is understood that our objection runs to all of this?

MR. BACON: Yes, sir.

Q. (by Mr. Bacon) Now, will you tell us, sir, what this order is and how it affects N & W?

[Tr. 60] A. This order covers the hopper cars of the C&O, the L&N, and the Norfolk and Western's ownerships developing empty in states east of the Mississippi and west of the six New England states.

The effect of this order is that all railroads who have hopper cars of these three railroads' ownerships that develop empty on their lines must return them immediately to the owning line. They cannot use them for loading on their own railroads.

Q. Without this order being effective, what use is possible by other roads of these hopper cars?

A. Other car service rules would apply which would permit the other railroads to load these as long as they could load them in the general direction of home. But this order makes it necessary to send the cars immediately home without being under load, which expedites the return of them to the owning line tremendously.

Q. And this applies to the N & W and two other railroads only?

A. That's correct.

Q. Mr. Nixon, I hand you an exhibit marked No. 7, and will ask you to take a look at that and tell us what it is?

A. This is a coal car distribution and rating bulletin issued by the Norfolk and Western Railway Company, and it lists all the mines on the Norfolk and Western Railway Company, and [Tr. 61] the rated loading capacity of those mines.

Q. That indicates the location and capacity of the mines in the various regions in which N & W now operates; is that correct?

A. Yes, sir; that's right.

Q. Not to go into the whole detail, how many mines are in Missouri?

A. Two mines are in Missouri.

Q. How many mines are shown on that, that you furnish your hopper cars for, outside of Missouri?

A. Well, in the Pocahontas Region, which covers the Atlantic and Pocahontas Region, there is 191; and in the Lake Region there are 23.

Q. None of the Lake Region encompasses Missouri?

A. No, sir.

Q. There are only two mines in Missouri?

A. Yes, sir.

Q. Now, Mr. Nixon, will you tell the Commission about the type of equipment that N&W needs to handle this terrific amount of coal movement?

A. In the first place, we have touched on briefly before, we need a terrific amount of hopper coal cars, and, of course, the next thing we need is location in order to handle this terrific volume of coal movement. The Norfolk and Western was a steam railroad probably longer than any other railroad in [Tr. 62] the United States before converting to diesel. As a result of that, they had the benefit of the other railroads' experience in diesel operation, to a great extent, so when they purchased power they were able to buy diesel power which was tailor-made more for their type of operation than they would have been if they had got in on the early stages when there wasn't as many diesels to choose from.

Q. When you say "power," you mean locomotives?

A. Yes, sir. So the power or the locomotives on the Norfolk and Western are purchased with the thought in mind of pulling heavy coal trains which will average up to two hundred cars per train and we operate many trains with two hundred and fifty carloads of coal.

MR. BRANNOCK: Mr. Bacon, this is so wholly irrelevant, I just can't see why it should go in even as an offer of proof.

MR. BACON: I think there is no doubt but what we are showing the difference in even the basic type of construction. These locomotives can't even be used out here, they can't be used in multiple units with Wabash because of the difference in construction, because they are needed for a different purpose completely.

CHAIRMAN PHILLIPS: I think it is irrelevant, but let him proceed for what it is worth.

[Tr. 63] MR. BACON: All right.

Q. (by Mr. Bacon) Tell us some of the specific manners in which, for example, the locomotives used by N & W in your mountainous coal haul differs from the locomotives used on the Wabash system for a different type of purpose.

A. Well, the locomotives on the N & W are equipped with dynamic brakes and the locomotives on the Wabash and the Nickel Plate are not equipped with dynamic brakes. Their brakes enable them to handle big trains down long grades much better than you can with the conventional braking system.

The power on the Norfolk and Western was purchased with the idea in mind of getting high horsepower, but also a high traction effort for long, slow pulls up these grades with heavy trains. On the Wabash and the Nickel Plate, our purpose in getting high horsepower is for a high speed manifest train rather than for long, hard, slow pulls.

MR. BRANNOCK: They would run on the Wabash tracks, wouldn't they?

WITNESS NIXON: They would run on the Wabash tracks, but they wouldn't multiple with the Wabash power.

MR. BRANNOCK: I am just asking you if they would run on the Wabash tracks.

WITNESS NIXON: Yes.

COMMISSIONER HUTCHISON: Are you saying, Mr. [Tr. 64] Nixon, the equipment is not interchangeable?

WITNESS NIXON: No, sir. You cannot take a Norfolk and Western—all your locomotives nowadays are put together in multiple units, three, four, five units.

COMMISSIONER HUTCHISON: The point you are making, you leased the Wabash because it was a competitive line to the Nickel Plate?

WITNESS NIXON: Yes, sir; that's right.

MR. BRANNOCK: On some occasions, they just run one locomotive, one unit, don't they?

WITNESS NIXON: On local trains; yes, sir.

CHAIRMAN PHILLIPS: Will these trains operate on the Nickel Plate line, these cars, these diesels?

WITNESS NIXON: They will operate on the line, but they won't multiple with the Nickel Plate engine.

MR. BACON: Since the Commission has gotten into this question—I was going to get to it later—by the way, let me formally offer, if I haven't, Exhibit 7, I believe it is.

MR. BRANNOCK: I renew the objection to it.

[Tr. 66]

MR. BACON: Now, we have offered this in evidence, that is Exhibit 10 I am referring to. I don't mean to go through all these figures, but what is the basic factor to be drawn from this particular exhibit?

WITNESS NIXON: Well, this exhibit shows very clearly that a Norfolk and Western diesel locomotive will not multiple with either the Nickel Plate or the Wabash.

Q. (by Mr. Bacon) I see the word "M.U." used in that, what does that mean?

A. Multiple unit.

Q. In other words, it won't multiple, you mean you can't use it in multiple units?

A. Correct.

Q. This was distributed over the system to show the locomotives that could not be used in multiple units with others?

A. That's right.

[Tr. 67] Q. What does it show with regard to N & W locomotives?

A. That they will.

Q. And Wabash?

A. Well, the N & W locomotives and Wabash locomotives will not multiple unit together.

MR. BRANNOCK: Will they with the Nickel Plate?

WITNESS NIXON: No, sir.

MR. BRANNOCK: But the multiple units of the N & W could come out here and run over the Wabash lines or over the Nickel Plate lines, could they not?

WITNESS NIXON: As long as you kept them separate from the other engine; yes, sir.

Q. (by Mr. Bacon) I have asked you concerning a general description of the N & W operations and you have given it to us. The Nickel Plate was bought and merged with N & W as of October 16; will you give us a brief statement concerning the operations of what we will call the old Nickel Plate?

A. The old Nickel Plate is what we term a bridge line, meaning that it is an intermediate carrier between the west and east. The Nickel Plate operates from East St. Louis, Illinois, and Peoria, Illinois, and Chicago, on the west, to Buffalo on the east. The character of its traffic is primarily merchandise, general merchandise traffic. Boxcar traffic is the principal character of its traffic.

Q. Does it have coal operations as a part of its business?

[Tr. 68] A. Yes, it does have a coal operation that is in the Eastern Ohio area. And this coal from that area is taken to the Pittsburgh area, or it is taken to the Great Lakes area, or to the industrial centers of Chicago, Toledo and Buffalo.

Q. Mr. Nixon, I am directing your attention to a period after the lease rather than before; has there been any change in the operation of the coal-hauling procedure or traffic business for N & W and Nickel Plate?

A. No, sir; there has not.

Q. Do you assign locomotives by regions?

A. Yes, sir; we do.

[Tr. 69]

Q. All right, sir, thank you. Now, Mr. Nixon, I hand you Exhibit 9, and I will ask you generally to state what it is.

A. This is a statement of the locomotives owned by the Norfolk and Western, exclusive of the New York, Chicago & St. Louis (Nickel Plate), as of January 1, 1965.

[Tr. 71]

Q. Now, Mr. Nixon, I want you to tell the Commission whether or not any of the locomotives described and figured in Exhibit 9 were in Missouri on January 1, 1965, or at any time during the year 1964?

A. No, sir; they were not.

Q. Do you, as an officer of the Company, have any present plans whereby your operations would change to where these locomotives would come into Missouri?

A. No, sir; we do not.

Q. Why?

A. Because the assignment of these units to the Norfolk and Western property down there is such that they continue to be required down there and there would be no particular advantage in transferring them up—and this, of course, is emphasized by the fact that we can't M.U. these units with the Wabash units.

[Tr. 72]

Q. I will now hand you Exhibit No. 11. Will you tell us what that is?

A. This is a list of locomotives formerly owned by New York, Chicago and St. Louis (Nickel Plate) and now owned by Norfolk and Western, as of January 1, 1965.

[Tr. 73]

Q. Now, Mr. Nixon, will you tell us whether or not any of the locomotives represented in Exhibit 11 were in Missouri on January 1, 1965, or in Missouri at any time during 1964?

A. They were not.

Q. Why do you give that answer?

A. Because we had none of those engines in the State of Missouri on those dates.

Q. Now, shall we turn our attention to the hopper cars? I will hand you at this time Exhibit No. 12. Will you tell us what this is?

A. This is a statement that I had prepared, showing the hopper cars owned by the Norfolk and Western, as

of January 1, 1965, excluding those formerly owned by the New York, Chicago & St. Louis (Nickel Plate) Railroad.

Q. Was this chart prepared under your supervision and [Tr. 74] at your direction?

A. It was.

Q. And are the figures shown on this exhibit correct and accurate?

A. Yes, sir.

MR. BACON: We now offer in evidence Exhibit No. 12.

MR. BRANNOCK: Same objection.

Q. (by Mr. Bacon) Now, sir, will you explain this exhibit to us?

A. This exhibit shows the total number of coal hopper cars owned by the Norfolk and Western, and the year of acquisition, with the original cost determined from our valuation department, and a depreciated value depreciated on the Missouri State Tax Commission depreciation rate of 5 percent per year, for a maximum of 75 percent depreciation.

Q. Now, on several of these exhibits, Mr. Nixon, I notice that you group together under year of acquisition and original cost, "1950 and Prior," why is that handled that way?

A. Because anything prior to that time would be prior to the 15-year period, fully depreciated.

Q. In other words, your depreciation has been fully taken so that is why it was put in the exhibits that way. Will you give us, sir, the total number of these coal hopper cars, their original cost and depreciated value?

[Tr. 75] A. The total number of cars is 58,655, the original cost is \$339,727,351.04, the depreciated value is \$212,562,046.58.

Q. I hand you now, Mr. Nixon, Exhibit 13, and I will ask you to state what that is.

MR. BRANNOCK: The same objection to No. 12.

MR. BACON: Yes, sir. I assume it is considered in evidence, subject to the objection?

MR. BRANNOCK: All right.

WITNESS NIXON: This is a statement of the location of coal or, in other words, open hopper cars, which shows the Wabash hopper cars on Wabash lines, the Nickel Plate hopper cars on Nickel Plate lines, the Norfolk and Western hopper cars on lines of Norfolk and Western other than Wabash and Nickel Plate, as of the first of January, 1963, and the first of each subsequent month up to and including January 1, 1965.

Q. (by Mr. Bacon) Was this exhibit made up under your direction and supervision?

A. Yes, sir.

Q. And are the results shown here correct and accurate?

A. Yes, Sir.

MR. BACON: We offer in evidence Exhibit 13.

MR. BRANNOCK: It is understood my objection follows to all these exhibits and testimony regarding them?

[Tr. 76] MR. BACON: Yes, sir.

Q. (by Mr. Bacon) Now, Mr. Nixon, will you tell us how you got the information for this exhibit and put it together?

A. This information was obtained from the car accounting records from which we can determine the actual location of the cars on any day that we use, and we picked them for the cars, the Wabash cars on Wabash lines, Nickel Plate cars on Nickel Plate lines, Norfolk and Western on Norfolk and Western lines—the owner-ships on each of those lines is shown for those particular dates.

Q. Now, I noticed asterisks following the months of November 1, 1964, December 1, 1964, and January 1, 1965; will you explain why the asterisks are there and what they mean?

A. The asterisks mean that in those figures the hopper cars on the Wabash line included the Nickel Plate hopper cars and the Norfolk and Western hopper cars. And the hopper cars on the Nickel Plate line includes the Wabash cars and the Norfolk and Western. And on the Norfolk and Western lines, for those three figures, it includes the Nickel Plate hopper cars and the Wabash hopper cars.

Q. Now I want to be sure that this exhibit is completely understood. Am I correct, let's take where it says "Wabash Hopper Cars on Wabash Lines," let's take that column—now, that doesn't mean Wabash lines in Missouri only, does it?

A. No, sir; that is the entire Wabash system.

[Tr. 78]

Q. I hand you Exhibit 14, Mr. Nixon, and I will ask you to state what it is.

A. This statement shows the Norfolk and Western hopper cars in Missouri, on-line and off-line, on December 1, 1964, and January 1, 1965, excluding Wabash and former New York, Chicago & St. Louis (Nickel Plate).

Q. Was this exhibit made at your direction and under your supervision?

A. Yes, sir.

Q. Was it made from the records of your company, kept in the ordinary business operations?

A. Yes, sir.

Q. Are they true and correct, the results shown here?

A. Yes, sir.

MR. BACON: We now offer in evidence Exhibit No. 14.

MR. BRANNOCK: The same objection.

Q. (by Mr. Bacon) Now, Mr. Nixon, will you explain this exhibit to us?

A. This exhibit shows the Norfolk and Western hopper cars that were on the tracks of the Wabash Railroad Company, or on tracks of other railroads that operate through the State of Missouri, and these cars on those

railroads had to be in Missouri as of that date to be counted.

Q. Is that what you mean by on-line and off-line?

A. Yes, sir. On-line is Wabash Railroad tracks, and [Tr. 79] off-line is any other railroad tracks.

Q. So this exhibit shows, from your records, Norfolk and Western hopper cars anywhere in Missouri?

A. Yes, sir.

Q. Either on-line or off-line?

A. Yes, sir.

Q. On December 1, 1964 and on January 1, 1965?

A. Yes, sir.

Q. And this exhibit excludes the Wabash and the old Nickel Plate hopper cars?

A. Yes, sir.

Q. All right, sir. Will you give us the totals for December 1, 1964?

A. There was a total of 165 units, whose original cost was \$868,840, and the depreciated value was \$438,946.

Q. As of January 1, 1965, what are the totals?

A. There were 155 cars, the original cost was \$849,236, depreciated value was \$452,699.

Q. All right, sir, thank you. I now hand you Exhibit 15 and ask you to state what this is.

A. This is a statement of the coal cars loaded daily, by regions, from October 16 to December 31, 1964, inclusive.

Q. Now, was this exhibit, which is made up of three pages, prepared under your direction and under your supervision?

A. Yes, sir.

[Tr. 80] Q. Was it made from the records of your company, which records were kept in the ordinary course of business?

A. Yes, sir.

Q. Are these figures accurate and correct?

A. They are.

MR. BACON: We now offer in evidence Exhibit 15.

MR. BRANNOCK: Well, I have made an objection that carries clear through.

At this time, I would like most forcefully to renew the objection, however. This is so wholly incompatible with the issue in this case that I certainly can't see why the Commission wants to listen to it.

CHAIRMAN PHILLIPS: We will let it go in the record for what it is worth.

Mr. Bacon, proceed.

Q. (by Mr. Bacon) Will you explain with regard to Exhibit 15, Mr. Nixon, would you tell us generally how you compiled these figures?

A. These are compiled from daily reports that we get by regions, showing the number of cars of coal loaded.

Q. And the regions that you have shown here are the same regions which you have described to us heretofore in the way you define your regions?

A. Yes, sir.

[Tr. 81] Q. All right, sir. Skipping all of the detail on pages 1 and 2, since that is there for examination, would you by regions give, for the record, the average loadings in each region for the period shown?

A. For the Atlantic & Pocahontas Region, the average loading, the average daily loading, was 4,488.6 cars; the Lake Region was 436.9; and the Western Region was 55.1.

Q. And Missouri is in the Western Region?

A. Yes, sir.

[Tr. 82]

Q. I hand you now Exhibit No. 17, Mr. Nixon, and I will ask you to state what that Exhibit 17 is.

A. Exhibit 17 shows the coal shipments by Norfolk and Western, originating in West Virginia, Virginia, Kentucky, and Ohio, showing destination by areas and states, for the year 1964, and the figures are in tons.

Q. Did you have this prepared under your direction and supervision?

A. Yes, sir.

Q. Made up from the regular records of your company, kept in its ordinary business?

A. Yes, sir.

Q. Are the figures shown on this exhibit correct and accurate?

[Tr. 83] A. Yes, sir.

MR. BACON: We offer in evidence Exhibit 17. I understand that it is received subject to the same objection.

CHAIRMAN PHILLIPS: All right. Let it be entered for what it is worth.

Q. (by Mr. Bacon) Now, Mr. Nixon, you have this broken down, this coal that originates in West Virginia, Virginia, Kentucky, and Ohio, and you have it broken down into destinations, some by state and some by area, I suppose; will you tell us what you mean when you use under the word "Destination" the word "Tidewater"?

A. "Tidewater" is coal that is loaded at these points that go to Norfolk, Virginia, and is dumped out of the cars into boats for shipment on the ocean.

Q. Now, what do you mean when you say "Lakes Docks"?

A. That is coal mined in these states on our lines that go to Sandusky, Ohio, for dumping into the dock there for movement by boat to utilities and industries on the Great Lakes.

Q. What do you mean by "River Docks"?

A. Coal that is loaded in these states that goes to the Ohio River where we have a dumping operation, we dump coal from cars into barges for movement along the river to final destination.

Q. And "All-Rail"?

[Tr. 84] A. That is coal that moves from these states to its final destination by railroad, all the way.

Q. Now, continuing to refer to this exhibit, I see that you have put California and Colorado in brackets, and you have typed in "equals .0026 of total tonnage," will you explain what you mean by that figure?

A. These figures is a breakdown of the all-rail tonnage to the various states that were its destination point, shows the volume. And you will note that there was none of this coal that was mined and loaded on the Norfolk and Western that went to the State of Missouri. And there was only two states on which the coal could have gone through the State of Missouri, and that is California and Colorado. And the tonnage to California and Colorado equals .0026 of the total tonnage of coal mined in these states.

Q. Now, Mr. Nixon, based on your experience with the company and your knowledge of the movement of the cars and need for cars, or any records that you might have, do you have any figures or any judgment as to the number of cars on the old N & W under load per day? I am talking about hopper cars. We are still talking about the coal movement in the hopper cars.

A. Yes. We maintain daily reports that show the number of cars of coal under load at certain locations, such as Norfolk, Virginia, and coal that is under load and enroute to Norfolk, Virginia, or stored on line that is eventually going to Norfolk, [Tr. 85] and we have figures that shows the cars of coal that is under load for our Lake dock at Sandusky, and also for our river dock at Keno, Virginia—and the total of these cars will run around 25,000 cars every day.

Q. That is daily cars, under load?

A. Yes, sir.

Q. You said under load daily?

A. Yes, sir.

Q. Can you tell us whether or not this total of cars under load daily, in that N & W area back there, has changed any since the date of the lease?

A. No, sir; it hasn't. The operation continues to be the same.

Q. The operation of the coal business—

CHAIRMAN PHILLIPS: Will you raise your objections? He isn't here.

MR. BACON: Put it in the record that he objects to it as immaterial and irrelevant.

Q. (by Mr. Bacon) Now, Mr. Nixon, based on all the factors that we have discussed here, based on all the information in these exhibits that you have prepared and we have offered to the Commission, and based on your own knowledge of the need and use of this hopper equipment, do you have a judgment as to how many of these N & W hopper cars would have come into Missouri on a given date?

[Tr. 86] A. I don't foresee any change in the operation, particularly in the use of these hopper cars, that would bring about any change in the number of these Norfolk and Western cars that would be in the State of Missouri, over and above what our records have shown.

Q. By "records have shown," you mean your records of the Norfolk and Western cars here on December 1 and January 1?

A. Yes, sir.

Q. December 1, 1964 and January 1, 1965?

MR. BRANNOCK: That is so wholly immaterial.

COMMISSIONER HUTCHISON: You have been saving objections, haven't you?

MR. BACON: Yes.

CHAIRMAN PHILLIPS: He saved them.

MR. BRANNOCK: I just hate to see the record burdened with such evidence.

CHAIRMAN PHILLIPS: Let them be introduced for what they are worth.

Q. (by Mr. Bacon) You referred back to what your records showed on December 1 and January 1, those

figures are shown on this exhibit which is now in the record?

A. On Exhibit 14. And they showed a total of 165 Norfolk and Western hopper cars in Missouri on December 1, 1964, and 155 cars on January 1, 1965.

Q. All right, sir. Now, I will hand you Exhibits marked [Tr. 87] 18 and 19. Take a look at them and we will treat them individually.

First, dealing with Exhibit 18, will you tell us what that is?

A. It is a statement of the "Open Top Hopper Cars Formerly Owned and Leased by New York, Chicago & St. Louis (Nickel Plate) and Now Owned or Leased by Norfolk and Western, as of January 1, 1965."

Q. How about 19?

A. Exhibit 19 is a statement of "Coal Hopper Cars Formerly Owned and Leased by New York, Chicago & St. Louis (Nickel Plate) and Now Owned by Norfolk and Western, and Which Were in Missouri On-Line and Off-Line on December 1, 1964 and January 1, 1965."

Q. Were these both prepared under your direction and at your supervision?

A. Yes, sir; they were.

Q. And the figures used to come to these results were obtained from your regular business operating records?

A. Yes, sir.

Q. And you are testifying as to the correctness and accuracy of these figures?

A. Yes, sir.

MR. BACON: We offer in evidence Exhibits 18 and 19.

[Tr. 88] MR. BRANNOCK: Those are objected to as being unduly repetitious and wholly irrelevant, and should be excluded.

CHAIRMAN PHILLIPS: They may be entered for what they are worth.

MR. BACON: These deal with Nickel Plate cars rather than N & W.

Q. (by Mr. Bacon) Directing your attention first to Exhibit 18, will you tell us what it is and explain it for us, please?

A. It shows on January 1, 1965 the New York, Chicago & St. Louis, or Nickel Plate, had a total of 5,334 cars, whose original cost was \$21,392,431, and depreciated value was \$9,201,771.

Q. And as we have used depreciated value all through here, that means depreciated according to the regular 5 percent a year depreciation which is allowed by the Tax Commission?

A. Yes, sir.

Q. All right, sir. Exhibit 19, will you explain that for us, please, sir?

A. This shows the number of units of these Nickel Plate hoppers that were either on-line or off-line in the State of Missouri on December 1, 1964, which was 21, and their original cost was \$94,895, with a depreciated value of \$47,496.

And on January 1, 1965, there were 8 of these cars [Tr. 89] in Missouri, with an original cost of \$34,198, and a depreciated value of \$18,909.

Q. Now, Mr. Nixon, once again based on the factors that we have been discussing and all the exhibits in evidence, as to the movement and placing and need of cars, and based on your own knowledge and your position as the Assistant Manager for Transportation, do you have a judgment as to how many of the cars, hopper cars, that is, which are included in Exhibit No. 18 would have been in Missouri on a given date?

A. I think that the figures on Exhibit 19, which showed 21 on December 1 and 8 on January 1, are representative of what we can expect in the future, because the movement of coal on the former Nickel Plate from its Eastern Ohio fields to the Great Lakes and Chicago will continue in effect, and I see no change in that.

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[Tr. 95]

Q. Now, Mr. Nixon, I hand you Exhibit No. 23, and ask you to state what that is.

A. This is a recap of depreciated values of rolling stock, shown on Exhibits 9, 11, 12, 18, 20, 21, and 22.

Q. And this is made up by you from the other exhibits which are in evidence here before us?

A. Yes, that's right.

Q. And is merely a compilation or a recap of the totals shown on those exhibits?

A. Yes, sir.

Q. Now, before offering it for explanation, I see you have the word "Less" and some figures written down at the bottom, will you explain those?

A. Well, the figures above show the depreciated value of all these units, units that never came into the State of Missouri. However, we had the exhibit that showed that there were a few hopper cars with the Norfolk and Western and a few hopper cars of the Nickel Plate that were in the State of [Tr. 96] Missouri, either on-line or off-line.

So to get a correct figure of the depreciated value of equipment that doesn't come into Missouri, we had to deduct the estimated depreciated value of that small number of cars that did come into Missouri.

Q. So the total shown on Exhibit No. 23 of \$345,636,123 represents what?

A. It represents a net depreciated value of all equipment that doesn't come into the State of Missouri.

MR. BACON: I offer in evidence Exhibit 23.

MR. BRANNOCK: Same objection.

CHAIRMAN PHILLIPS: Same ruling.

[Tr. 97]

DONALD E. BRUMMITT,

being sworn, testified as follows:

DIRECT EXAMINATION

by Mr. Bacon:

Q. Would you please state your name?

A. Donald E. Brummitt.

Q. You have been sworn in this matter?

A. Yes, sir.

Q. Where do you live?

A. Roanoke, Virginia.

Q. Are you presently employed by the Norfolk and Western Railway?

A. Yes, sir.

Q. When were you employed by them?

A. October 16, 1964.

Q. And what is your present title or capacity with the Norfolk and Western Railway?

A. Director of Real Estate.

Q. Generally speaking, what do your duties encompass?

A. All matters pertaining to sale, purchase and lease of real estate, and in charge of ad valorem property taxes.

Q. Before you went with the Norfolk and Western, by whom were you employed?

A. Wabash Railroad Company.

Q. When did you go with the Wabash Railroad Company?

[Tr. 98] A. 1929.

[Tr. 99]

Q. Now, do you know, Mr. Brummitt, what the depreciated value of the rolling stock of the Wabash Railroad was as of January 1, 1965? I am jumping now to January 1, 1965.

A. You are talking about the 1965 assessment or the 1964 assessment?

Q. I am going to get these two figures in now. Yes, I want the 1965 figures.

A. As we computed it?

Q. Because I used them in my opening remarks.

The depreciated value, it was eighty-two something.

A. Oh, \$82,456,813.

Q. All right, sir. Now, will you give me the depreciated value of the rolling stock of anything owned, leased or used by Norfolk and Western as of January 1, 1965?

A. \$513,309,877.

Q. All right, sir. Now, let's go back to 1964. Are you familiar with and do you know the assessed value placed on the Wabash properties for January 1, 1964?

A. Yes, sir. \$20,409,862.

Q. Out of that assessment, did you have the information as to the assessment placed on rolling stock?

A. Yes, sir. I will have to explain how that was made up to give you a true picture.

Rolling stock, \$9,177,683, plus road and buildings of \$12,092,594. From the sum of those was deducted the amount [Tr. 100] of \$860,415, resulting in the final assessment of \$20,409,862.

Q. Mr. Brummitt, if on the return for January 1, the Wabash system was used and the Wabash properties were used, and using the depreciation schedules and adjustments used by the Tax Commission, have you computed what the assessed value would be on that system and on those properties?

A. On the rolling stock, \$10,103,340.

Q. All right, sir. At my request, Mr. Brummitt, did you have prepared under your direction and supervision a study of what we call a ton mile per mile in Missouri, compared with ton miles per mile over the entire operation of the N & W?

A. I did.

Q. First off, will you tell us what does the term "ton mile per mile" mean?

A. "Ton mile per mile," net ton mile per mile is a ton of freight moved one mile in relation to the district in which you are figuring. For a state, it would then be divided by the number of miles in that state.

MR. BRANNOCK: At this time, I want to object to this line of testimony. I think it is wholly irrelevant to the issue before this Commission.

MR. BACON: We propose to show—unless we are going to do it the same way—by this witness that this study,

Mr. Chairman, there is a very direct relationship between the ton mile per mile of road and the equipment used to [Tr. 101] haul that.

MR. BRANNOCK: I, again, move that it not be considered in evidence. It is wholly irrelevant. Ton mile has no relation to the value of this rolling stock for ad valorem tax purposes for the year 1965.

CHAIRMAN PHILLIPS: We will let it be introduced for what it is worth.

You might follow the same procedure, if you have any more. It will expedite it.

Q. (by Mr. Bacon) Go ahead, will you, tell us first what a ton mile per mile is.

A. It is one ton moved one mile in relation to the miles being considered.

Q. Could you elaborate just a little bit more on that?

A. If you move, say, just one ton of freight one mile over a line that is ten miles long, your ton miles per mile then would be 1-10th of a ton mile per mile.

Q. Is it the tons moved over a given mile of roadway, in a year?

A. No.

Q. Or in a given time?

A. No. It is that ton moved one mile over a given length.

Q. Over a given length?

A. Yes.

[Tr. 102] Q. Now, is there a direct relationship, Mr. Brummitt, between a ton mile per mile in a given area and the rolling stock used in that area?

A. Yes, sir. It is a good measure of the rolling stock required to move that freight, the cars, the locomotives, the more tonnage you move the more power you have to have, the more cars you have to have to move it, or larger cars to move it. It bears a very close relationship.

Q. Well, will you give us the result then of the study that I asked you to make, and that is of the ton mile per mile in Missouri compared with the ton mile per mile of the entire Norfolk and Western operation?

A. Ton miles of freight moved over the entire new Norfolk and Western operation amounted to 6,036,000 per mile of road for the 7,577 miles contained in the entire Norfolk and Western.

Yet during this same period in Missouri, there was only handled 3,262,000 ton miles per mile of road in Missouri for the 627.61 miles, or approximately in Missouri only 54.04 percent of the system average per mile of road.

Q. All right. Now, how do you apply that figure to the depreciated values of rolling stock which have been considered by the Commission at arriving at the assessment in this case?

A. Well, the depreciated value of the system rolling stock as obtained from Form 1-A was the \$513,309,879. This [Tr. 103] allocated to Missouri as the Commission does, on a mileage basis, amounted in Missouri to \$42,514,377.

But giving consideration to the use of this road mileage in Missouri, the much lower use and occupancy by rolling stock of the 54.04 percent produced \$22,974,769. Applying the factor of 47 percent produces a value of rolling stock in Missouri of \$10,798,141.

Q. In other words, what you have done, you have taken the track formula, the results of applying the track formula and have applied another factor?

A. Yes, sir.

Q. In order to arrive at a more accurate evaluation of the rolling stock which is actually used in Missouri?

A. That's right.

Q. Now, at my request, Mr. Brummitt, did you have a study made to determine the actual units of rolling stock actually used, owned or leased by N & W in Missouri on January 1, 1965 and the depreciated values of

those units? When I say in Missouri, I mean off-line and on-line.

A. I did; yes, sir.

Q. All right, sir. I will hand you Exhibit 25. Is Exhibit 25 the result of this study which I asked you to make?

A. It is.

Q. This deals now with January 1, 1965 and shows the units and the value of those units owned or leased by N & W [Tr. 104] in Missouri on that date, whether off-line or on-line?

A. That is correct.

MR. BRANNOCK: We object to any testimony based on this study for the reason that it is immaterial whether or not it was in Missouri or used in Missouri on January 1, 1965. The system, as a whole, is under consideration here and that is what we are trying to ascertain the value of with relation to Missouri, not just what was in Missouri. That would be based on trackage.

MR. BACON: Is it the same—or shall I make my rebuttal? What I mean, this is an actual study of records done at great detail to find what was here. Now, your basic premise is that the trackage formula comes up with a result which is so far away from the value of the actual property, with the proper tax situs here, that the result obtained under the track formula is unconstitutional. This is the yardpost. This is the starting gate, Mr. Brannock, that we go from.

CHAIRMAN PHILLIPS: The same ruling—received for what it is worth.

MR. BRANNOCK: We have to follow the statute and in the purview of the statute this exhibit has no meaning.

[Tr. 105] MR. BACON: I understand, Mr. Chairman, it is received subject to the objection for its probative value, for what it is worth.

I haven't even offered it yet. You understand I had asked him to say what it was

MR. BRANNOCK: Now, I object to the testimony on it.

MR. BACON: All right, sir.

CHAIRMAN PHILLIPS: Same ruling on the testimony.

Q. (by Mr. Bacon) I think, Mr. Brummitt, you better testify concerning—was this made under your direction?

A. It was; yes, sir.

Q. Under your supervision?

A. Yes, sir.

Q. Made from records of your company which are kept in the ordinary course of business and from the records you obtained from others?

A. Yes, sir.

Q. Are you in a position to testify that the figures shown on here are accurate and correct?

A. Yes, sir; they are.

Q. Now, with that foundation, we will offer the exhibit.

MR. BRANNOCK: I move that the exhibit not be accepted in evidence for the reason that it has no [Tr. 106] meaning within the application of the statute to the property of Norfolk and Western Railway for the purpose of ad valorem taxes for the year 1965, which is under consideration by this Commission, in that it is inconsequential, and has no meaning.

CHAIRMAN PHILLIPS: Sustained. Let it in for whatever it is worth.

Q. (by Mr. Bacon) Now, Mr. Brummitt, I want you to tell us, so it will be clear in the record, as to how you went about obtaining the figures which now make up this Exhibit No. 25? How you did it?

A. First, we obtained from our car accountants, from the records they used to keep in the ordinary course of business, the cars on the Wabash lines in the State of Missouri, as of January 1, 1965. Also from the car accountants, the cars that had been delivered to any other railroad operating in the State of Missouri just prior to January 1, 1965.

We then sent the list of cars on foreign lines in Missouri, such as the Frisco, and asked them to check off those cars that were actually in the State of Missouri on January 1, 1965. We received answers from all the roads operating in Missouri as to the N & W cars on their lines, that were in Missouri on January 1.

We obtained from our superintendent the motive power that was located in the State of Missouri on January 1, 1965.

[Tr. 107] We then applied against these units the original cost obtained from the valuation department by year of acquisition. That is 1950 and prior, and so on through 1964, applied the same depreciation rate used by the Commission to these values, and obtained a grand total depreciated value of all N & W equipment in the State of Missouri on January 1, 1965, whether on Wabash lines or foreign lines, amounting to a total of \$16,230,420.

After applying the 47-percent factor employed by the Commission, obtained a value of \$7,628,297.

Just for the sake of clarification, that \$7,628,297 compares with the approximately twenty million dollar figure established by the Commission, using just the road mile basis.

Q. Now, I notice that you have at the top of the columns the years from 1950 through 1964?

A. Yes, sir.

Q. Why is it broken down that way?

A. That was the year of acquisition so we could apply the proper depreciation rate as used by the Commission.

Q. Am I correct then that this report which makes up Exhibit 25 deals with the actual identifiable units of rolling stock?

A. That's correct.

Q. In Missouri, whether off-line or on-line?

A. There were actually no formulas applied to it or [Tr. 108] anything.

Q. And the depreciated value was, as you have given it, \$16,230,420?

A. Correct.

Q. Before your 47-percent factor was applied?

A. Yes, sir.

Q. What was the total number of units in Missouri on January 1, 1965?

A. 3,231.

Q. And you have broken this down further under your sub-headings of freight cars, diesel locomotives, work equipment, passenger train, pullman car?

A. Yes, sir.

Q. So that this includes the total rolling stock owned or leased by Norfolk and Western in Missouri on January 1, 1965?

A. Yes, sir.

MR. BACON: All right; sir. I am sure I offered it, but to make sure we will offer Exhibit No. 25 in evidence. I am confident we did, but just to make sure.

MR. BRANNOCK: Then I renew the objection previously made to this and other exhibits for the reason that it is not within the purview of the statute and, therefore, has no meaning to this Commission.

CHAIRMAN PHILLIPS: Same ruling.

Q. (by Mr. Bacon) Mr. Brummitt, I hand you exhibits [Tr. 109] marked 26, 27, 28 and 29, and I will ask you to state what they are, generally?

A. These are statements covering the total rolling stock owned or leased by the Wabash Railroad Company in the State of Missouri on April 1, 1964, on July 1, 1964, and on October 1, 1964, and the total rolling stock owned or leased by the Norfolk and Western Railway Company in the State of Missouri on December 1, 1964.

Q. Now, were these exhibits made under your supervision and at your direction?

A. They were.

Q. And were they compiled from figures and in the same manner that the same exhibit for January 1 was made up?

A. Exactly the same; yes, sir.

Q. Done the same way?

A. Yes, sir.

Q. And are you satisfied as to the correctness and accuracy of the statements and figures given on these exhibits?

A. I am.

MR. BACON: I will offer at this time Exhibits 26, 27, 28 and 29.

MR. BRANNOCK: Preliminary to objection, is the figure the same as you turned in to this Commission for tax purposes, \$5,891,388, as of April 1, 1964?

WITNESS BRUMMITT: What was this figure, Mr. [Tr. 110] Brannock?

MR. BRANNOCK: Total rolling stock.

MR. BACON: Which exhibit are you referring to?

MR. BRANNOCK: I am referring to Exhibit—I don't see that it is numbered.

MR. BACON: For what date?

MR. BRANNOCK: April 1, 1964. I said before in the amount of \$5,891,388.

WITNESS BRUMMITT: That figure has never been furnished this Commission.

MR. BRANNOCK: And you don't furnish this Commission any figures as of April 1 on any year, do you?

WITNESS BRUMMITT: Not to my knowledge, we have not.

MR. BRANNOCK: Then I move that it not be accepted in evidence, as not being within the purview of the statute. The only date that this Commission is concerned about is January 1 of any year, and specifically January 1, 1965. I move that it not be accepted.

MR. BACON: Mr. Brannock, we have given you the figures of January 1, 1965. This lease took effect in October, 1964. We have prepared these studies showing

the actual units on various dates to show what, if any, changes took place as far as Missouri was concerned after the lease, as before the lease. We don't say these are taxable dates. These were given to show [Tr. 111] the relationship of the one set of figures to another, and to give you and the reviewing body a picture of any change, if any, which took place as far as the actual units of rolling stock in Missouri.

MR. BRANNOCK: I renew the objection. It is clearly inadmissible in evidence for the reasons that I have previously stated. April 1 is meaningless for the purposes of assessment of taxes. July 1 is meaningless. October 1 is meaningless. December 1 is meaningless.

MR. BACON: We feel it is incumbent upon us to give to the Commission material over a spread of time to assist in arriving at the average value of rolling stock used in Missouri. We are trying to give the full picture to the Commission so the average can be stricken rather than picking out just one day.

MR. BRANNOCK: Nowhere in Chapter 151 is average referred to or given as the basis by which this Commission shall assess the property of railroads. The only date that is given is January 1. Any other date is of no consequence. I renew the objection for that further reason.

CHAIRMAN PHILLIPS: We will enter it in for what it is worth.

MR. BRANNOCK: As a further preliminary question [Tr. 112] to objection, I would like to ask the witness if there could be as much as a 40-percent variation in these figures?

WITNESS BRUMMITT: A 40-percent?

MR. BRANNOCK: Yes.

MR. BACON: What figures, Mr. Brannock?

MR. BRANNOCK: As reflected on any of these exhibits and as turned in to this Commission, as of January 1.

MR. BACON: Well, I will object to that question for the reason that this doesn't purport to be anything that

is requested by the Commission on its return. We have given you all the information we possibly could as to the rolling stock. We are here, Mr. Brannock, to show from detailed studies, laboriously made, the actual rolling stock in Missouri on a whole bunch of dates either before and after, because one of our basic premises in this whole hearing is that we want this Commission and the court to know the great discrepancy between the assessed value arrived at by applying the track formula alone and the depreciated value of the actual rolling stock in Missouri, and strike an average across the year. That is the whole premise of why we are here.

CHAIRMAN PHILLIPS: Mr. Bacon, did I understand [Tr. 113] you earlier to say that you were using a depreciation factor for the State of Missouri and the equalizing factor, have we discontinued that on these figures?

MR. BACON: No, sir.

CHAIRMAN PHILLIPS: Then I feel the witness should be able to answer whether there would be a difference of 40 or 50 percent, one month from the other.

MR. BACON: He didn't ask that. He asked if there was a 40 or 50-percent discrepancy between this figure and the figure reported on the tax return—that was his question. And I objected to that for the reason these don't purport to have anything to do with any figures shown on what you asked for in a return.

MR. BRANNOCK: Well, he is objecting to that question. What is the ruling of the Commission on that question? Shall the witness answer?

CHAIRMAN PHILLIPS: Can you rephrase the question?

MR. BRANNOCK: Well, Mr. Bacon—

CHAIRMAN PHILLIPS: Mr. Bacon is not the witness.

MR. BRANNOCK: I am going to ask Mr. Bacon to rephrase it in a manner that will be agreeable to him, if that doesn't state it.

CHAIRMAN PHILLIPS: As I understand it, I believe he asked the question then, is it possible from these figures to have a variation from month to month of 40 [Tr. 114]

percent, a month-to-month variation of equipment on the rolling stock of the Wabash Railroad?

MR. BACON: If that is the question, I have no objection.

CHAIRMAN PHILLIPS: I think the witness is qualified to answer.

WITNESS BRUMMITT: What figures vary, you mean 40 percent?

CHAIRMAN PHILLIPS: The figures you gave as the valuation of your rolling stock.

WITNESS BRUMMITT: The total value?

CHAIRMAN PHILLIPS: Yes, sir.

WITNESS BRUMMITT: I wouldn't think they would vary by 40 percent, by as much as 40 percent; no, sir.

MR. BRANNOCK: I think the Chair has previously ruled that this can go in for what it is worth, over my objection, wasn't that the ruling?

CHAIRMAN PHILLIPS: That is the ruling.

Q. (by Mr. Bacon) All right, sir. Let's turn our attention then to Exhibit 26, which has to do with April 1, I believe that is the one we were talking about, and you have stated you compiled these figures in the same manner in which you compiled the figures for Exhibit 25?

A. Yes, sir; that's correct.

Q. And all done under your supervision and at your [Tr. 115] direction?

A. Yes, sir.

Q. You got your car accounts and then you had your values applied in the same manner?

A. Yes, sir.

Q. All right, do you show date of acquisition of each of the units involved?

A. That's correct.

Q. Now, will you give us, sir, the result of the study then for April 1, 1964, as it is reflected on Exhibit 26?

A. The depreciated value of all rolling stock owned or leased by the Wabash Railroad Company in the State of Missouri, on April 1, 1964, is \$12,534,869. After application of the 47 percent, we obtain a value of \$5,891,388.

Q. All right, sir. Will you turn your attention to Exhibit 27? Was Exhibit 27 prepared at your direction and under your supervision?

A. It was.

Q. It deals with actual identifiable units of rolling stock present in Missouri?

A. Yes, sir.

Q. You got the date of acquisition, the original cost, and then applied the depreciation we have been talking about?

A. Yes, sir.

Q. All right, sir. Will you give us the results of your [Tr. 116] study presented by Exhibit 27 for July 1, 1964?

A. This shows the total rolling stock owned or leased by the Wabash Railroad Company in the State of Missouri, on July 1, 1964, the depreciated value of all of this equipment, \$15,112,534. And after application of the 47 percent, \$7,102,891.

Q. How many units on that date?

A. There were 3,077 units.

MR. BRANNOCK: I again renew my objection and state that it is of no importance to this Commission, nor is it of evidenciary value to this Commission, anything that the Wabash Railroad owned in the year 1964.

The question before this Commission is the value of the property of the Norfolk and Western Railway as of January 1, 1965. And I again move that these exhibits be stricken and all testimony regarding the Wabash Railroad for the year 1964 be stricken.

CHAIRMAN PHILLIPS: We will receive it for what it is worth.

MR. BACON: I thought we had offered all four and the objection was made to all four, and that they were to be considered in evidence subject to the objections, so we could go right ahead with the inquiry.

MR. BRANNOCK: With that understanding, we will [Tr. 117] proceed. I object to any answers founded on these exhibits.

Q. (by Mr. Bacon) Now, Mr. Witness, Exhibit 28 is what?

A. Exhibit 28 is a statement showing the total rolling stock owned or leased by the Wabash Railroad Company in the State of Missouri on October 1, 1964.

CHAIRMAN PHILLIPS: The same formula is used on all of these?

MR. BACON: Same formula used on all of them.

Q. (by Mr. Bacon) These were made under your direction, supervision, and compiled in the same way as Exhibit 25 and the other exhibits you have identified; is that correct?

A. That's correct.

Q. All right, sir. Will you give us the results of the study as represented by Exhibit 28?

A. On this date, October 1, 1964, there were 2,995 units of equipment, having a depreciated value of \$15,464,817. And after application of the 47-percent factor, produces a value of \$7,268,464.

Q. You are satisfied as to the correctness and accuracy of those figures?

A. Yes, sir.

Q. I turn your attention to Exhibit 29.

A. Exhibit 29 is the total rolling stock owned or leased by the Norfolk and Western Railway Company, in the State of [Tr. 118] Missouri, on December 1, 1964.

Q. Was this study made the same way, that you made the study which resulted in Exhibits 25, 26, 27 and 28?

A. It was.

Q. And made under your supervision and direction?

A. Yes, sir.

Q. Are you satisfied to the correctness and accuracy of the figures represented on Exhibit 29?

A. I am.

Q. Will you give us the result, please, of a study for December 1, 1964, as represented by Exhibit 29?

A. All the rolling stock owned or leased by the Norfolk and Western Railway Company in the State of Missouri,

on December 1, 1964, was 3,117 units, having a depreciated value of \$15,282,075. And after application of the 47-percent factor, produces a value of \$7,182,575.

MR. BACON: May we have it understood that Exhibits 25 through 29 were offered and were received, subject to the objection?

MR. BRANNOCK: That's right.

CHAIRMAN PHILLIPS: Yes, sir.

Q. (by Mr. Bacon) At my request, Mr. Brummitt, had you used the totals shown on these exhibits to arrive at a certain average of the figures shown on those exhibits?

A. Yes, sir.

[Tr. 119] Q. All right. I will ask you to take the exhibits which reflect the number of units in Missouri on January 1 and December 1.

A. Yes, sir.

Q. All right, have you compiled the average number of units as represented in those two studies?

A. I have.

Q. What is that average?

A. 3,174 units.

Q. Now, this was after the lease went into effect on October 16; was it?

A. We are talking about December of 1964 and January of 1965; yes, sir.

Q. Did you compute the average depreciated value of all of the rolling stock shown on those two, for December 1 and January 1?

A. I did, and that average amount was \$7,405,436.

Q. All right, sir. Have you, at my request, computed the average number of units shown on the exhibits representing studies as of April 1, July 1, and October 1?

A. I have.

Q. What is the average?

A. The average unit is 2,871.

Q. Did I ask you also to compute the average value of the rolling stock of all the units as shown on your studies for [Tr. 120] April 1, July 1, and October 1?

A. Yes, that average amounts to \$6,750,247.

Q. Now, did I ask you to put all five of these studies together and compute the average number of units shown on all five of these studies represented by Exhibits 25 through 29?

A. You did, and that average amounts to 2,992 units.

Q. Did I ask you to do the same thing for average of value as shown by these same five exhibits?

A. Yes, sir; and that average amounts to \$7,014,723.

Q. Mr. Brummitt, I think probably the last question: Why did you select this spread of dates over the year up to January 1 for the purpose of your studies in preparing these exhibits?

A. They are the end of each quarter in 1965. December 1 was chosen because of an average possibly between the date of the lease, October 16, and January 1. We felt that this gave a representative view of the entire year.

Q. Both before and after the effective date of the lease?

A. Yes, sir.

[Tr. 121]

Q. (by Mr. Bacon) Referring, Mr. Brummitt, to Exhibits Nos. 25 and 29, and to shorten it up, Exhibit 25 is the result of your study as of January 1, 1965, 29 is the result of your study as of December 1, 1964. Now, I want to make sure that in explaining these exhibits you have clearly indicated in the record what is included in these two exhibits insofar as the rolling stock is concerned, owned, leased, or otherwise—what does it encompass?

A. These two exhibits, covering December 1, 1964 and January 1, 1965, cover the rolling stock, owned or leased by the Norfolk and Western Railway Company, located in the State of Missouri, any place in the State of Missouri on those particular dates.

Q. That includes the leased Wabash cars and everything?

A. Everything; yes, sir.

Q. Now, with regard to Exhibits Nos. 26, 27 and 28, they deal respectively with your studies of April 1, July 1, and October 1; will you tell me what cars these exhibits encompass?

[Tr. 122] A. These exhibits cover the rolling stock owned or leased by the Wabash Railroad Company, located in the State of Missouri, on those particular dates.

MR. BACON: All right, sir, thank you.

Now, Mr. Chairman, Mr. Brummitt testified with regard to this ton mile study he made, and he used notes. They were in an exhibit form, Exhibit No. 24. And for ease of review, we would like to offer 24, Exhibit 24, in evidence.

MR. BRANNOCK: Same objection.

CHAIRMAN PHILLIPS: Same ruling.

MR. BRANNOCK: I renew my objection also to Exhibits 25 and 29, in that they only reflect property in Missouri and not for the taxable date, therefore are totally and wholly irrelevant.

MR. BACON: With regard to Exhibit 24, which we offered in evidence, perhaps I should ask Mr. Brummitt just to take a look at it and testify for the record that Exhibit 24 represents and gives the figures which we gave orally in evidence in discussing the ton mile per mile study that he made.

WITNESS BRUMMITT: It does; yes, sir.

MR. BACON: And you made those up?

WITNESS BRUMMITT: Yes, sir.

MR. BACON: They are correct?

[Tr. 123] WITNESS BRUMMITT: They are correct.

MR. BRANNOCK: Same objection.

CHAIRMAN PHILLIPS: Same ruling.

MR. BACON: Mr. Chairman, I believe that concludes our presentation.

CHAIRMAN PHILLIPS: This will conclude the hearing.

July 6, 1965

BEFORE THE STATE TAX COMMISSION OF
MISSOURI

FILE NO. 1965-6

In the matter of the 1965 Ad Valorem Assessment of
the Norfolk and Western Railway Company.

Findings of Fact, Conclusions of Law and Decision

FINDINGS OF FACT

The Petitioner, Norfolk and Western Railway Company, is incorporated under the laws of the Commonwealth of Virginia with its principal office and place of business in Roanoke, Virginia; The Wabash Railroad Company is incorporated under the laws of Ohio with its principal offices and places of business in Wilmington, Delaware and Philadelphia, Pennsylvania. Norfolk and Western Railway Company owns no track or roadbed within Missouri but leases all of the track, roadbed, rolling stock and all other property owned by the Wabash Railroad Company in this State, pursuant to a lease dated March 1, 1961, as amended October 1, 1964, effective as of October 16, 1964. Petitioner owns and leases an extensive railway system which it operates in States other than the State of Missouri.

Pursuant to the information submitted by Petitioner to the Commission on Form 1, on May 15, 1965, the State Tax Commission of Missouri, on June 2, 1965, placed a total assessed valuation of \$31,298,939 on Petitioner's property in Missouri for taxes for the year 1965.

Said Assessment included an assessed value for roadbed in the amount of \$11,677,875; for buildings in the amount of \$499,722; and for rolling stock in the amount of \$19,981,757, less \$860,415, which is deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts.

To arrive at assessed value of rolling stock taxable in the State of Missouri, the Commission determined the assessed value of the entire rolling stock of the Petitioner, wherever situated, for the year 1965, to be in the amount of \$513,309,877. This was arrived at as in all other railroad assessments made by the State Tax Commission of Missouri, by taking the original cost of the equipment by the year of acquisition and allowing five percent depreciation per year but with a maximum depreciation of Seventy-five percent of original cost. Thereafter, in this case, as in the case of all railroad assessments for the year 1965, a factor of forty-seven percent was applied by the State Tax Commission resulting, in this case in the figure of \$241,255,643. The track formula was then determined and it was found that 8.2824 percent of all of the main and branch line tracks owned or leased everywhere by Petitioner, were leased, owned, or controlled by Norfolk and Western in Missouri. This percentage of the above value of the depreciated rolling stock was determined to be \$19,981,757 and was by the Commission stated to be the value of the rolling stock properly taxable in Missouri. The figures used in this determination were furnished the Commission by Petitioner in Form 1, which was filed with the Commission.

That from the total value of the fixed property, which includes the roadbed and buildings, assessed in Missouri at \$12,177,597 which property was owned by the Wabash Railroad Company and leased to Norfolk and Western, plus the above assessed value of the rolling stock and all other property, the sum of \$860,415 was deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts, and that as a result of the above method of assessment and computation, a total assessed valuation was made of \$31,298,939.

No assessment has been made against Wabash Railroad Company for the property leased to Petitioner.

The Petitioner, on June 15, 1965, filed a request for adjustment and equalization of assessment and for a hearing with respect thereto, and such hearing was granted and such rehearing heard on June 23, 1965, at the Offices of The State Tax Commission of Missouri, 501 Jefferson Building, City of Jefferson, Cole County, Missouri, and the Commission then considered the assessment placed on said property by it as of January 1, 1965. The Railway and Commission agreed that the hearing held on June 23 constituted an exhaustion of administrative remedies of the Petitioner.

At said hearing, the Petitioner introduced evidence consisting of testimony supplemented by exhibits for the purpose of showing assessed valuation placed by the Commission on the rolling stock of Petitioner was excessive and resulted in an unjustified discrimination against Petitioner in violation of the Constitutions, both of the United States and of the State of Missouri. The Petitioner did not challenge the amount of the assessment on its fixed properties.

The State Tax Commission of Missouri has adopted uniform procedures and methods to determine the true value in money of the railroad property for assessment purposes within the State of Missouri. Such procedures and methods are designed to value all railroad property within the State of Missouri uniformly and equally with all other property within the State of Missouri. Such procedure and methods were used in assessing and valuing the petitioner's property as of January 1, 1965. The evidence failed to disclose that the property of the Petitioner was ever placed on sale in the open market.

Utility company valuations are made by the State Tax Commission as to the distributable property and rolling stock of railroads while other properties are assessed locally by county and township assessors. The relative values of sales ratio assessments and utility assessments are separate and distinct in that there are two methods

used in arriving at values, and there is no basis for comparison between the valuation of the sale of a farm or a home based on revenue stamps attached to the deed and the valuation of utility property which is not being sold frequently, or ever. There is no similarity in these two types of property or in the method of arriving at the valuations for assessing purposes thereof.

CONCLUSIONS OF LAW

All railroads now constructed, in the course of construction, or which shall hereafter be constructed in this State and all property, tangible personal property, and intangible personal property owned, hired or leased by any railroad company or corporation in this State shall be subject to taxation, and taxes assessed on real property, and tangible personal property shall be assessed in the manner set forth in Chapter 151, R.S.Mo.

Property shall be assessed for tax purposes at its true value in money or such percentage of its true value in money as may be fixed by law. There is no such thing as an absolute true value of property. The values mentioned in the Statutes are the valuations of officials whose duty it is to make them. Property, including railroad property, is not a commodity which has a fixed market value at a given period. The value is determined always by the estimate of the party who values it; all presumptions will favor the correctness of the valuations of the officials whose duty it is to make them; and their good faith and the validity of their acts is presumed. The State Tax Commission of Missouri is the sole judge of the credibility of witnesses appearing before it.

Every owner, lessor or party having an interest in property shall have the right to appeal and to a rehearing under rules prescribed by the State Tax Commission. The said Commission shall investigate all such appeals or motions for rehearing or protests of assess-

ments and shall correct any assessment which is shown to be unlawful, unfair, improper, arbitrary or capricious.

In assessing, adjusting and equalizing a railroad property for any year or years, the State Tax Commission may arrive at its finding, conclusion and judgment, upon its knowledge, or such information as may be before it, and shall not be governed in its findings, conclusions and judgment by the testimony which may be adduced, further than to give to it such weight as the Commission may think it is entitled to; provided, that when any railroad shall extend beyond the limits of this State and into another state in which a tax is levied and paid on the rolling stock of such road, then the said Commission shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company.

In determining the total length of the road of railroad company for the purpose of determining its tax assessment, the Commission is required to take into consideration the track which is operated partially under the control of the railroad under trackage agreements as well as that which is owned by the railroad, even though such trackage agreement does not provide for the exclusive use by the railroad of the track in order to require it to be taken into consideration.

The Assessment of the rolling stock of the Petitioner was determined in accordance with Chapter 151, R.S.Mo., particularly Section 151.060-3, in that said assessment was determined by taking that percentage of the total value of all the rolling stock of the Petitioner that the number of miles of the trackage of Petitioner in this State bears to the total length of the road as owned or controlled by Petitioner wherever situated.

Section 151.060-3 R.S.Mo., which prescribes the formula by which the Commission determined the assessed valuation on Petitioner's rolling stock in the State of Missouri, provides a fair and reasonable method to determine that amount of rolling stock of any railroad which extends beyond the limits of the State which may be taxed by this State and does not constitute a violation of any of the rights or privileges guaranteed by the Constitution of Missouri or the Constitution of the United States.

This formula, as used in conjunction with the determination of value using depreciation and a forty-seven percent equalization factor together with the deduction of the economic factor as set out in the Findings of Fact, were used uniformly by the Commission to arrive at assessments of the rolling stock of the various railroads in this State, and to apply this formula to some railroads and not to others would be arbitrary and discriminatory.

The evidence adduced by the Petitioner does not show that the valuation placed upon the rolling stock of Petitioner was grossly excessive, nor that such assessment resulted in an unlawful or unconstitutional taxation of any property of Petitioner, nor does the evidence adduced by the Petitioner show that in applying the formula herein indicated that the Commission acted in an unlawful, unfair, improper, arbitrary or capricious manner.

DECISION

The Commission, after giving due consideration and study to the records, evidence and data submitted on behalf of the Commission and studying the transcript of the proceedings before it, finds that the valuation of the Petitioner's property for the year 1965 should be as follows: Thirty-One Million Two Hundred Ninety-Eight Thousand Nine Hundred Thirty-Nine Dollars, (\$31,298,939).

STATE TAX COMMISSION OF MISSOURI

IN THE CIRCUIT COURT OF COLE COUNTY,
MISSOURI

**Petition for Review of an Order of the Missouri State
Tax Commission**

Come now the plaintiffs, Norfolk and Western Railway Company (Norfolk and Western) and Wabash Railroad Company (Wabash), pursuant to Supreme Court Rule 100.03, et seq. and Sec. 536.100, et seq., R.S. Mo., and for their Petition For Review Of An Order Of The State Tax Commission, state:

1. Plaintiff Norfolk and Western is a duly existing corporation under the laws of the Commonwealth of Virginia with its principal office and place of business in Roanoke, Virginia, and is qualified to do business in the State of Missouri; Plaintiff Wabash is a duly existing corporation, incorporated under the laws of the State of Ohio with its principal offices and places of business in Wilmington, Delaware and Philadelphia, Pennsylvania, and is qualified to do business in the State of Missouri.

2. During the year 1964 to October 16, 1964, plaintiff Wabash was engaged in the business of transporting persons and property for hire in Missouri and other states.

3. By written lease, effective October 16, 1964, plaintiff Wabash leased to plaintiff Norfolk and Western its track, roadbed, and other fixed properties in Missouri and elsewhere, along with all of its rolling stock.

4. Since October 16, 1964, plaintiff Norfolk and Western has engaged in the business of transporting persons and property for hire in Missouri, and had prior to and has since such date engaged in the business of transporting persons and property for hire in other states.

5. The defendants are the Missouri State Tax Commission (hereinafter referred to as the "Commission") and the members and Secretary thereof.

6. This proceeding is brought pursuant to Supreme Court Rule 100.03, et seq. and Sec. 536.100, et seq., R.S. Mo.,

to review the Commission's 1965 assessment of plaintiff's distributable property used in Missouri, which assessment was purportedly made under Sec. 138.420 and Sec. 151.060, R.S.Mo.

7. Sec. 138.420 and Sec. 151.060 give the Commission exclusive authority to "assess, adjust, and equalize" the aggregate valuation of the property of railroads except local property which pursuant to Sec. 151.100, R.S. Mo., is assessed by the respective county assessors. Said Sec. 151.060 provides further in section (3) thereof, in part:

"that when any railroad shall extend beyond the limits of this state and into another state in which a tax is levied and paid on the rolling stock of such road, then the said commission shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company."

8. Under the terms of said lease aforesaid, plaintiff Norfolk and Western is required as a part of the rent due plaintiff Wabash, to pay the ad valorem taxes assessed against plaintiff Wabash properties. As such lessee and solely for the reason that it is responsible for the payment of said ad valorem taxes under the terms of the lease, Norfolk and Western filed a tax return to the State of Missouri. Norfolk and Western owns no fixed properties or roadbed within the State of Missouri.

9. Purportedly acting under the authority of said Sections 138.420 and 151.060, R.S.Mo., the Commission, on or about June 2, 1965, after including for assessment purposes the distributable property owned by plaintiff Wabash and leased to plaintiff Norfolk and Western, along with all other rolling stock leased or owned by Norfolk and Western, wherever situate or used, arrived at a value of \$31,298,939.00 as being the value of distributable

property properly taxable in the State of Missouri, \$19,981,757.00 representing the assessment against rolling stock and \$12,177,597.00 representing the assessment against fixed properties, less \$860,415.00 deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts. In its notice of assessment, the Commission set June 15, 1965, as the date for a hearing relative to the assessment. Counsel for plaintiffs appeared on said date and filed with the Commission a writing pursuant to Sec. 536.063, R.S.Mo., denominated "Request for Adjustment and Equalization of Assessment, and for hearing with respect thereto", a copy of which writing is attached hereto and marked "Exhibit A". The Commission set the hearing requested by plaintiffs in said writing for June 23, 1965.

10. On June 23, 1965, plaintiffs presented competent and substantial evidence in support of the allegations theretofore submitted to the Commission in the said Exhibit A and inter alia, in proof of the fact that the depreciated value of the units of rolling stock leased or owned by plaintiffs physically present in Missouri on January 1, 1965, after application of the forty-seven per cent (47%) factor allowed against the depreciated rolling stock of all railroads, was \$7,628,297.00, and that the depreciated value of the average number of units of rolling stock leased or owned by plaintiffs physically present in Missouri during the year 1964, after applying said forty-seven per cent (47%) factor was \$7,014,723.00. The assessed valuation of rolling stock as determined by the Commission in its original assessment (\$19,981,757.00) was grossly excessive and had no necessary or reasonable relation to the number of units or the aforesaid value of units physically present in Missouri. The Commission presented no evidence in support of its previously determined total assessment of \$31,298,939.00.

11. At the said hearing on June 23, 1965, the parties entered into a stipulation as to certain facts, a copy of

which stipulation is attached hereto and marked "Exhibit B".

Among other things it was stipulated that the Commission in arriving at the assessed value of rolling stock in this case for the year 1965 used the depreciated value of all rolling stock and movable property owned or leased by Norfolk and Western as of January 1, 1965, wherever situated, in the amount of \$513,309,877.00; that in this case as in all other railroad assessments the depreciated value was determined by taking the original cost of the equipment by year of acquisition and allowing five per cent (5%) depreciation per year but with a maximum allowable depreciation of seventy-five per cent (75%) of original cost; that in this case as in the case of all railroad assessments for the year 1965, a factor of forty-seven per cent (47%) was applied by the Commission resulting in this case in the figure of \$241,255,643.00; that the "track formula" (Sec. 151.060 (3)) was then applied in that 8.2824 per cent of all the main and branch line tracks everywhere which were leased, owned or controlled by Norfolk and Western was within Missouri and this percentage of the above value of the depreciated rolling stock was determined to be \$19,981,757.00 and was by the Commission stated to be the value of the rolling stock properly taxable in Missouri; that from the total value of the fixed property assessed in Missouri at \$12,177,597.00, which fixed property was owned by plaintiff Wabash and leased to plaintiff Norfolk and Western, and the above assessed value of said rolling stock, the sum of \$860,415.00 was deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts, and that as the result of the above method of assessment and computation, a total assessed valuation was made of \$31,298,939.00.

12. On July 6, 1965, the Commission delivered to plaintiffs in writing notice of its decision and that a final

assessment for 1965 against the property owned or leased by Norfolk and Western had been made in the amount of \$31,298,939.00, \$12,177,597.00 representing the assessment against fixed properties and \$19,981,757.00 representing the assessment against rolling stock, and from these two figures was deducted \$860,415.00 as an economic factor. In this proceeding plaintiffs do not challenge the amount of the assessment of fixed properties.

13. Plaintiffs state that they and each of them is aggrieved by this final decision of the Commission as to the assessment of rolling stock, and that they have exhausted all administrative remedies provided by law.

14. Plaintiffs state that in making its assessment of the rolling stock, the Commission erred in the following respects:

(a) That the assessment by the Commission of the rolling stock in the amount of \$19,981,757.00 was unlawful, invalid, void, arbitrary, unreasonable, grossly excessive, capricious, and discriminatory.

(b) That the method of making such assessment as applied to the facts in this case is in contravention of the Due Process Clause of the 14th Amendment to, and the Commerce Clause (article 1, Sec. 8) of, the Constitution of the United States and of the Due Process Provisions and Equal Protection Provisions of the Constitution of the State of Missouri.

(c) That the said assessment as made by the Commission was in excess of its statutory authority and jurisdiction.

(d) That the Commission unlawfully and erroneously included for assessment purposes properties leased or owned by Norfolk and Western with no tax situs in the State of Missouri, and which, because of the unique operations of Norfolk and Western, are habitually and regularly used outside the State of Missouri and which will never have a tax situs within Missouri.

(e) That the assessed valuation of the rolling stock, as made by the Commission, by applying the "track formula" against the depreciated, equalized value of all rolling stock owned or leased by Norfolk and Western, bears no necessary or reasonable relation to the number of units or the depreciated, equalized value of units of rolling stock physically located in Missouri or habitually and regularly used in Missouri.

(f) That the assessment as made by the Commission is not supported by competent and substantial evidence upon the whole record.

(g) That the Commission has failed to properly assess the properties owned by the plaintiff Wabash, which Wabash properties within Missouri would be subject to execution to satisfy the tax based on this invalid and unlawful assessment valuation which includes property with no taxable situs in Missouri and not owned by Wabash.

(h) That the Commission erred in failing to recognize that Wabash is a corporate entity separate and apart from Norfolk and Western and that since and after the date of the said lease by Wabash to Norfolk and Western there has been no substantial change in the operations of rolling stock on Wabash lines in Missouri nor has there been a significant change in the number of units of rolling stock on Wabash lines in Missouri.

(i) That in applying the "track formula" of Sec. 151.060(3) under the facts in this case, without further exercising its power to adjust and equalize, the Commission unreasonably and arbitrarily attributed to Missouri, for tax purposes, a grossly disproportionate amount of the total rolling stock owned and leased by plaintiff Norfolk and Western; the Commission disregarded the unique operations of Norfolk and Western and the fact that proportionately far heavier traffic and far more valuable equipment is located and regularly and habitually used outside the State of Missouri than is located and used in Missouri; the Commission disregarded the evidence of the depreciated value of the large amount of rolling stock of Norfolk and Western which, by its very nature and the

unique business demands of Norfolk and Western, never came into Missouri and which for the same reasons will never be used in Missouri, but which was erroneously included by the Commission in computing the assessed valuation of Norfolk and Western; the Commission disregarded the evidence that the ton miles of freight carried over a mile of Wabash track in Missouri in 1964 was only fifty-four per cent (54%) of the ton miles of freight carried over an average mile of all track owned, leased, or controlled by Norfolk and Western. . . .

(j) That the Commission further erred in failing to recognize that Wabash, as owner, is responsible to the State of Missouri for the ad valorem tax for 1965 on its fixed properties in Missouri and a proper portion of its rolling stock, but rather the Commission has attempted to place the assessment against Norfolk and Western with the result that the attempted assessment includes property with no tax situs in Missouri.

(k) That the Commission erred in purporting to assess the ad valorem tax in this case against Norfolk and Western rather than against Wabash and has unlawfully and without legal justification interpreted Sections 151.010 and 151.020, R.S.Mo., apparently in the belief that such an interpretation permitted it to include for assessment purposes the value of rolling stock owned or leased by Norfolk and Western which was never physically in the State of Missouri on or prior to January 1, 1965, and which has never acquired a tax situs in the State of Missouri.

(1) That in using the "track formula" of Sec. 151.060(3) R.S.Mo., under the facts in this case without further exercising its power to adjust and equalize, the Commission has acted unreasonably, arbitrarily and in excess of its statutory authority, and in a manner which results in an assessment of rolling stock which is violative of the said Due Process and Commerce Clauses of the Constitution of the United States and the Due Process and Equal Protection Provisions of the Constitution of Missouri.

WHEREFORE, plaintiffs pray that this Court, after reviewing the Commission's order of final assessment, its findings of fact and conclusions of law, and the record as a whole, shall adjudge, order, and decree:

(a) That the "track formula" set forth in Sec. 151.060(3) as used by the Commission in making its assessment of rolling stock and as applied to the facts of this case is unconstitutional and results in a violation of the Due Process Clause of the 14th Amendment to the United States Constitution, the Commerce Clause of the United States Constitution (Article 1, Sec. 8) by imposing an extreme and undue hardship on interstate commerce, and a violation of the Due Process and Equal Protection Clauses of the Constitution of Missouri.

(b) That the application by the Commission of the said "track formula", Sec. 151.060(3), to the aggregate depreciated, equalized value of all of the rolling stock owned or leased by Norfolk and Western, wherever situate, and wherever used, without further adjustment as provided by law, is prohibited by the Due Process Clause of the 14th Amendment to, and the Commerce Clause, (Article 1, Sec. 8) of, the United States Constitution, and the Due Process Clause and Equal Protection Clause of the Constitution of Missouri.

(c) That the assessed value of the rolling stock for tax purposes in Missouri must, as a matter of law, bear a reasonable and necessary relation to the equalized, depreciated value of the rolling stock actually, physically present in Missouri on January 1, 1965, or the equalized, depreciated value of the average number of units of rolling stock regularly and habitually used in Missouri, whereas the assessment in question is grossly in excess of the equalized, depreciated value of the rolling stock actually, physically present in Missouri on January 1, 1965, and grossly in excess of such value of the average number of units of rolling stock regularly and habitually in the State of Missouri, and therefore such assessment is contrary to the aforesaid provisions of the Constitutions of the United States and Missouri.

(d) That the said "track formula" provided for by Sec. 151.060(3) does not constitute the only factor to be used by the Commission in making an assessment of the rolling stock taxable in Missouri, but, rather, merely defines that portion of a railroad's rolling stock which is subject to the Commission's powers of assessment, equalization, and adjustment, and in fact situations such as in this case where an arbitrary application of the "track formula" results in an assessment grossly in excess of the depreciated, equalized value of rolling stock physically present in Missouri and generally and habitually used in Missouri, the Commission should exercise its discretion in accordance with the record before it and pursuant to its statutory power of adjustment in order to avoid a resulting assessment which does violence to the Due Process Clause and Commerce Clause of the Constitution of the United States and the Due Process and Equal Protection Clauses of the Constitution of Missouri.

(e) The mere execution of the said lease between Wabash and Norfolk and Western, viewed under a proper interpretation of Sec. 151.010 and Sec. 151.020, R.S.Mo., and the facts in this record, does not permit the State of Missouri to include for tax purposes the total rolling stock owned or leased by Norfolk and Western, but the correct method of assessment is one made against the Wabash distributable property in the same manner as used in prior years.

(f) That the case be remanded to the Commission with directions to redetermine the Missouri 1965 assessed valuation of the rolling stock, in accordance with the rulings of the Court and the record as a whole.

(g) Such further relief as may be just and proper.

Judgment of the Circuit Court of Cole County, Missouri

Thereafter, on December 21, 1965, the Court again takes up and considers this cause, and, having considered the evidence in the record of this cause, having considered the oral arguments of counsel, and their briefs, and being

now fully advised in the premises, finds the issues in this case against the plaintiffs and for the defendants and enters Judgment, as follows:

JUDGMENT

Now on this 21st day of December, 1965, the Court having fully considered the pleadings, the evidence and the entire record before the State Tax Commission as embodied in the transcript of record, the briefs, exhibits and arguments of counsel, and being fully advised in the premises, the Court finds all issues in this case against the plaintiffs and for the defendants herein.

THEREFORE, IT IS BY THE COURT ORDERED, ADJUDGED and DECREED that the decision of the State Tax Commission of the State of Missouri, "In the matter of the 1965 ad valorem tax assessment of the NORFOLK and WESTERN RAILWAY COMPANY," be, and the same hereby is, affirmed.

FILED:

DECEMBER 21, 1965.

* * * *

IN THE SUPREME COURT OF MISSOURI

Judgment

And Thereafter the following proceedings were had and entered of record in said cause on the 30th day of December, 1966, to-wit:

NORFOLK AND WESTERN RAILWAY COMPANY,
a Corporation, and WABASH RAILROAD COMPANY,
a Corporation, APPELLANTS,

51943 vs. Appeal from the Circuit Court of Cole County.

MISSOURI STATE TAX COMMISSION, HUNTER PHILLIPS,
HOWARD L. LOVE, J. RALPH HUTCHISON, Members of the
Missouri State Tax Commission, and J. R. Towson,
Secretary of the Missouri State Tax Commission,
RESPONDENTS.

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Cole County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondents recover against the said appellants their costs and charges herein expended and have therefor execution. (Opinion filed.)

And Thereafter on the 30th day of December, 1966, the opinion of Division No. One was filed, which opinion is in words and figures as follows:

Opinion**IN THE SUPREME COURT OF MISSOURI****DIVISION NUMBER ONE****SEPTEMBER SESSION, 1966****No. 51,943**

**NORFOLK AND WESTERN RAILWAY COMPANY,
a Corporation, and WABASH RAILROAD COMPANY,
a Corporation, APPELLANTS,**

**MISSOURI STATE TAX COMMISSION, HUNTER PHILLIPS,
HOWARD L. LOVE, J. RALPH HUTCHISON, Members of the
Missouri State Tax Commission, and J. R. TOWSON,
Secretary of the Missouri State Tax Commission,
RESPONDENTS.**

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY

THE HONORABLE JAMES T. RILEY, *Judge*

Proceeding under Section 536.100, et seq., V.A.M.S., for judicial review of a final decision of the State Tax Commission of Missouri. The circuit court affirmed the decision, and the railroad's appeal involves construction of the revenue laws of the state.

Appellants Wabash and Norfolk and Western entered into a lease effective October 16, 1964, whereby N & W leased all of the rolling stock and roadbed owned by Wabash in Missouri and elsewhere. As part of the payment due under the lease, N & W is to pay all taxes on the demised property. Also effective October 16, 1964, were a merger of the New York, Chicago and St. Louis Railroad Company (Nickel Plate) with N & W and a lease of the rolling stock and roadbed of the Pittsburgh and

West Virginia Railway Company by N & W. Prior to the leases and merger Nickel Plate, P & WV, and N & W did not run into Missouri.

Appellants furnished statements required of all affected railroads by Section 151.020, V.A.M.S., "setting out in detail the total length of their road so far as completed, including branch or leased roads, the entire length in this state, and the length of double or sidetracks, with depots, water tanks and turntables, the length of such road, double or sidetracks, in each county, etc., * * *; the total number of engines and cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or leased by them on the first day of January in each year, and the actual cash value thereof." On June 2, 1965, N & W was notified that its assessment for 1965 taxes on such properties was \$31,298,939. The notice advised also that a hearing relative to the assessment would be held June 15, 1965, and "please be prepared to submit detailed information on leased equipment including copies of such leases and any other pertinent data." The hearing was recessed until June 23, 1965, at which time appellants offered evidence on various matters including the depreciated value of property in the name of Wabash alone, studies concerning rolling stock actually in Missouri, the nature of appellants' business including coal hauling in the eastern United States, and figures relating to locomotives and coal hoppers employed in the coal-hauling portion of appellants' business. Appellants' corporate status and the commission's mode of computation were stipulated.

The commission entered its Findings of Fact, Conclusions of Law and Decision:

"FINDINGS OF FACT

"The Petitioner, Norfolk and Western Railway Company, is incorporated under the laws of the Common-

wealth of Virginia with its principal office and place of business in Roanoke, Virginia; The Wabash Railroad Company is incorporated under the laws of Ohio with its principal offices and places of business in Wilmington, Delaware and Philadelphia, Pennsylvania. Norfolk and Western Railway Company owns no track or roadbed within Missouri but leases all of the track, roadbed, rolling stock and all other property owned by the Wabash Railroad Company in this State, pursuant to a lease dated March 1, 1961, as amended October 1, 1964, effective as of October 16, 1964. Petitioner owns and leases an extensive railway system which it operates in States other than the State of Missouri.

"Pursuant to the information submitted by Petitioner to the Commission on Form 1, on May 15, 1965, the State Tax Commission of Missouri, on June 2, 1965, placed a total assessed valuation of \$31,298,939 on Petitioner's property in Missouri for taxes for the year 1965.

"Said Assessment included an assessed value for roadbed in the amount of \$11,677,875; for buildings in the amount of \$499,722; and for rolling stock in the amount of \$19,981,757, less \$860,415, which is deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts.

"To arrive at assessed value of rolling stock taxable in the State of Missouri, the Commission determined the assessed value of the entire rolling stock of the Petitioner, wherever situated, for the year 1965, to be in the amount of \$513,309,877. This was arrived at as in all other railroad assessments made by the State Tax Commission of Missouri, by taking the original cost of the equipment by the year of acquisition and allowing five percent depreciation per year but with a maximum depreciation of Seventy-five percent of original cost. Thereafter, in this case, as in the case of all railroad assessments for the year 1965, a factor of forty-seven percent was applied

by the State Tax Commission resulting, in this case in the figure of \$241,255,643. The track formula was then determined and it was found that 8.2824 percent of all of the main and branch line tracks owned (or leased everywhere by Petitioner, were leased, owned, or controlled by Norfolk and Western in Missouri. This percentage of the above value of the depreciated rolling stock was determined to be \$19,981,757 and was by the Commission stated to be the value of the rolling stock properly taxable in Missouri. The figures used in this determination were furnished the Commission by Petitioner in Form 1, which was filed with the Commission.

"That from the total value of the fixed property, which includes the roadbed and buildings, assessed in Missouri at \$12,177,597 which property was owned by the Wabash Railroad Company and leased to Norfolk and Western, plus the above assessed value of the rolling stock and all other property, the sum of \$860,415 was deducted by the Commission as an economic factor, which factor is allowed all railroads in varying amounts, and that as a result of the above method of assessment and computation, a total assessed valuation was made of \$31,298,939.

"No assessment has been made against Wabash Railroad Company for the property leased to Petitioner.

"The Petitioner, on June 15, 1965, filed a request for adjustment and equalization of assessment and for a hearing with respect thereto, and such hearing was granted and such rehearing heard on June 23, 1965, at the Offices of The State Tax Commission of Missouri, 501 Jefferson Building, City of Jefferson, Cole County, Missouri, and the Commission then considered the assessment placed on said property by it as of January 1, 1965. The Railway and Commission agreed that the hearing held on June 23 constituted an exhaustion of administrative remedies of the Petitioner.

"At said hearing, the Petitioner introduced evidence consisting of testimony supplemented by exhibits for the purpose of showing assessed valuation placed by the Commission on the rolling stock of Petitioner was excessive and resulted in an unjustified discrimination against Petitioner in violation of the Constitutions, both of the United States and of the State of Missouri. The Petitioner did not challenge the amount of the assessment on its fixed properties.

"The State Tax Commission of Missouri has adopted uniform procedures and methods to determine the true value in money of the railroad property for assessment purposes within the State of Missouri. Such procedures and methods are designed to value all railroad property within the State of Missouri uniformly and equally with all other property within the State of Missouri. Such procedure and methods were used in assessing and valuing the petitioner's property as of January 1, 1965. The evidence failed to disclose that the property of the Petitioner was ever placed on sale in the open market.

"Utility company valuations are made by the State Tax Commission as to the distributable property and rolling stock of railroads while other properties are assessed locally by county and township assessors. The relative values of sales ratio assessments and utility assessments are separate and distinct in that there are two methods used in arriving at values, and there is no basis for comparison between the valuation of the sale of a farm or a home based on revenue stamps attached to the deed and the valuation of utility property which is not being sold frequently, or ever. There is no similarity in these two types of property or in the method of arriving at the valuations for assessing purposes thereof."

"CONCLUSIONS OF LAW

"All railroads now constructed, in the course of construction, or which shall hereafter be constructed in this State and all property, tangible personal property, and intangible personal property owned, hired or leased by any railroad company or corporation in this State shall be subject to taxation, and taxes assessed on real property, and tangible personal property shall be assessed in the manner set forth in Chapter 151, R.S.Mo.

"Property shall be assessed for tax purposes at its true value in money or such percentage of its true value in money as may be fixed by law. There is no such thing as an absolute true value of property. The values mentioned in the Statutes are the valuations of officials whose duty it is to make them. Property, including railroad property, is not a commodity which has a fixed market value at a given period. The value is determined always by the estimate of the party who values it; all presumptions will favor the correctness of the valuations of the officials whose duty it is to make them; and their good faith and the validity of their acts is presumed. The State Tax Commission of Missouri is the sole judge of the credibility of witnesses appearing before it.

"Every owner, lessor or party having an interest in property shall have the right to appeal and to a rehearing under rules prescribed by the State Tax Commission. The said Commission shall investigate all such appeals or motions for rehearing or protests of assessments and shall correct any assessment which is shown to be unlawful, unfair, improper, arbitrary or capricious.

"In assessing, adjusting and equalizing a railroad property for any year or years, the State Tax Commission may arrive at its finding, conclusion and judgment, upon its knowledge, or such information as may be before it, and shall not be governed in its findings, conclusions and

judgment by the testimony which may be adduced, further than to give to it such weight as the Commission may think it is entitled to; provided, that when any railroad shall extend beyond the limits of this State and into another state in which a tax is levied and paid on the rolling stock of such road, then the said Commission shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company.

"In determining the total length of the road of railroad company for the purpose of determining its tax assessment, the Commission is required to take into consideration the track which is operated partially under the control of the railroad under trackage agreements as well as that which is owned by the railroad, even though such trackage agreement does not provide for the exclusive use by the railroad of the track in order to require it to be taken into consideration.

"The Assessment of the rolling stock of the Petitioner was determined in accordance with Chapter 151, R.S.Mo., particularly Section 151.060-3, in that said assessment was determined by taking that percentage of the total value of all the rolling stock of the Petitioner that the number of miles of the trackage of Petitioner in this State bears to the total length of the road as owned or controlled by Petitioner wherever situated.

"Section 151:060-3 R.S.Mo., which prescribes the formula by which the Commission determined the assessed valuation on Petitioner's rolling stock in the State of Missouri, provides a fair and reasonable method to determine that amount of rolling stock of any railroad which extends beyond the limits of the State which may be taxed by this State and does not constitute a violation of any of the

rights or privileges guaranteed by the Constitution of Missouri or the Constitution of the United States.

"This formula, as used in conjunction with the determination of value using depreciation and a forty-seven percent equalization factor together with the deduction of the economic factor as set out in the Findings of Fact, were used uniformly by the Commission to arrive at assessments of the rolling stock of the various railroads in this State, and to apply this formula to some railroads and not to others would be arbitrary and discriminatory.

"The evidence adduced by the Petitioner does not show that the valuation placed upon the rolling stock of Petitioner was grossly excessive, nor that such assessment resulted in an unlawful or unconstitutional taxation of any property of Petitioner, nor does the evidence adduced by the Petitioner show that in applying the formula herein indicated that the Commission acted in an unlawful, unfair, improper, arbitrary or capricious manner.

"DECISION

"The Commission, after giving due consideration and study to the records, evidence and data submitted on behalf of the Commission and studying the transcript of the proceedings before it, finds that the valuation of the Petitioner's property for the year 1965 should be as follows: Thirty-One Million Two Hundred Ninety-Eight Thousand Nine Hundred Thirty-Nine Dollars, (\$31,298,939)."

Upon appeal to the circuit court the decision was affirmed without additional findings of fact or conclusions of law and, on this appeal, appellants "do not challenge the amount of the assessment of the fixed properties located in Missouri, but do challenge the manner in which assessment was made of the rolling stock, the amount of rolling stock apportioned to Missouri and the resulting excessive assessment of rolling stock." Appellants also do not question the total depreciated valuation of the en-

tire rolling stock of N & W, \$513,309,877, the method of depreciation, the 47 percent adjustment and equalization factor, and the \$860,415 economic factor.

Appellants' contention is stated: "I. The Trial Court Erred in Affirming the Decision of the State Tax Commission, Its Findings of Fact and Conclusions of Law, and Its Assessment of Rolling Stock Against Norfolk and Western Railway, Because Such Assessment Contravenes the Due Process Clause (Section 1) of the Fourteenth Amendment to and the Commerce Clause (Article I, Section 8) of the Constitution of the United States and the Due Process Clause of the Constitution of the State of Missouri (Article I, Section 10), in That:

"(A) The Track Formula (Sec. 151.060(3)) Was Arbitrarily and Erroneously Applied by the Commission As the Sole Method of Apportioning Rolling Stock to Missouri, Inasmuch As the Uncontradicted Evidence Established (1) a Grossly Uneven Distribution of N & W Rolling Stock Throughout Its Operations, and (2) That the Percentage of All Units, Located in Missouri At Any Given Time, Varied Substantially from the Percentage in Missouri of All Miles of Road of the Railroad.

"(B) The Tax Commission, by Its Use of the Track Formula, Alone, under the Facts of This Case, Apportioned to Missouri a Grossly Excessive Amount of Rolling Stock, with No Fair, Necessary, or Reasonable Relation to the Units of Rolling Stock Actually Present in Missouri on January 1, 1965, or to the Average Number of Units Regularly and Habitually Used in Missouri During 1964, or to the Value of Such Units.

"(C) The Tax Commission, by the Invalid and Improper Use of the Track Formula, Alone, under the Facts of This Case, Apportioned to Missouri a Grossly Excessive Amount of Rolling Stock, and Thereby Included in the Assessment Property with No Tax Situs in Missouri.

"II. * * * Because the Decision of the Commission, its Findings of Fact, and Conclusions of Law are not Supported by Competent and Substantial Evidence Upon the Whole Record."

The State Tax Commission of Missouri has the exclusive power of original assessment of railroads, railroad cars, and rolling stock, Section 138.420(1), V.A.M.S.; "all real property, tangible personal property, and intangible personal property, owned, hired or leased, by any railroad company or corporation in this state, shall be subject to taxation," Section 151.010, V.A.M.S.; and "In assessing, adjusting and equalizing any railroad property * * * the state tax commission may arrive at its finding, conclusion and judgment, upon its knowledge, or such information as may be before it, and shall not be governed in its findings, conclusions and judgment by the testimony which may be adduced, further than to give to it such weight as the commission may think it is entitled to; provided, that when any railroad shall extend beyond the limits of this state and into another state in which a tax is levied and paid on the rolling stock of such road, then the said commission shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company," Section 151.060(3), V.A.M.S.

Appellants recognize that a state may impose an apportioned tax on the value of the rolling stock of a non-domiciliary railroad in the manner contemplated by the Missouri statutes, "that precision may not always be reached in taxing property of a foreign corporation which moves in interstate commerce," and they "make no claim that the track formula is per se invalid," thus limiting the question as to whether Missouri's method, Section 151.060(3), valid on its face, meets the test of reasonable

or fair and workable apportionment in its application to N & W in this case. *General Motor Corp. v. District of Columbia*, 380 U.S. 553, 562; *Norfolk and W. R. Co. v. North Carolina*, 297 U.S. 682, 685; *St. Louis Southwestern Ry. Co. v. State Tax Commission of Mo., Mo.*, 319 S.W. 2d 559, 561[1].

It has been repeatedly recognized in connection with statutes similar to Section 151.060(3) that an appropriate and constitutional method of assessment of an interstate railroad is to determine the value of the entire system "as a homogeneous unit representing a single profit-earning business," 51 Am. Jur., Taxation, § 877, and then to assign a percentage of that valuation to the taxing state according to some fair and reasonable method of apportionment. 84 C.J.S., Taxation, § 426(c). The courts have long considered that the valuation of the entire rolling stock of railroads under a unit method of assessment and the apportionment of that value to the taxing state in the proportion the number of miles of railroad operated in the taxing state bears to the total mileage of railroad in the entire system, is an equitable and eminently fair method of arriving at an assessment of rolling stock *Pullman's Palace Car Co. v. Pennsylvania*, 141 U.S. 18, 26; *Pittsburgh etc. R. Co. v. Backus*, 154 U.S. 421, 431; *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 174. The theory underlying such method of assessment is that rolling stock regularly employed in one state has an enhanced or augmented value when it is connected to, and because of its connection with, an integrated operational whole and may, therefore, be taxed according to its value "as part of the system, although the other parts be outside the State;—in other words, the tax may be made to cover the enhanced value which comes to the property in the State through its organic relation to the system." *Pullman Co. v. Richardson*, 261 U.S. 330, 338. See also Judson on Taxation, 2d Ed., §§ 258-268, discussing development of the unit method and mileage apportionment or "rule of

entirety" as an acceptable method of valuation of interstate railroads; 2 Cooley, Taxation, 4th Ed., § 805, on the philosophy of taxation of railroad companies by mileage apportionment; and *St. Louis Southwestern Ry. Co. v. State Tax Commission of Mo.*, *supra*, 319 S.W. 2d 1.c. 562 [4, 5], describing the theory of Section 151.060 as being "that the rolling stock is substantially evenly divided throughout the railroad's entire system, and the percentage of all units which are located in Missouri at any given time, or for any given period of time, will be substantially the same as the percentage of all the miles of road of the railroad located in Missouri." And it has been held that such methods are not an "attempt to tax property having a situs outside of the State, but only to place a just value on that within." *Adams Express Co. v. Ohio*, 165 U.S. 194, 227.

Of course, even if the validity of such methods be conceded, the results, to be valid, must be free of excessiveness and discrimination. Caution in application of such methods has been suggested in many cases, for example, *Braniff Airways v. Nebraska Board*, 347 U.S. 590, 603: "Property in transit may move so regularly and so continuously that part of it is always in the State. Then the fraction, but no more, may be taxed ad valorem." *Fargo v. Hart*, 193 U.S. 490, 500: "So long as it fairly may be assumed that the different parts of a line are about equal in value a division by mileage is justifiable. But it is recognized * * * that if for instance a railroad company had terminals in one State equal in value to all the rest of the line through another, the latter State could not make use of the unity of the road to equalize the value of every mile. * * * The same principle applies to personal property which the State would not have the right to tax directly." *Pittsburgh etc. R. Co. v. Backus*, *supra*, 154 U.S. 1.c. 431: "* * * there may be exceptional cases, * * * as for instance, where the terminal facilities in some large city are of enormous value, and so give to a mile or two in

such city a value out of all proportion to any similar distance elsewhere along the line of the road, or where in certain localities the company is engaged in a particular kind of business requiring for sole use in such localities an extra amount of rolling stock." See also *Wallace v. Hines*, 253 U.S. 66, *Rowley v. Chicago & N.W. R. Co.*, 293 U.S. 102, *Union Tank Line v. Wright*, 249 U.S. 275, *Southern Ry. Co. v. Kentucky*, 274 U.S. 76, *Hans Rees' Sons v. North Carolina*, 283 U.S. 123, *K.C. Ft. S. & M.R. Co. v. King*, 6 Cir., 120 F. 614, refusing application of mileage apportionment to accomplish obvious arbitrary or excessive results.

The stipulation and the findings and conclusions show that the commission did assess, adjust, and equalize, as required by statute, Section 151.060, and in keeping with a reasonable exercise of the philosophy of the unit method and mileage apportionment there provided. The commission ascertained the depreciated value of the rolling stock of N & W as of January 1, 1965, from the return filed by N & W pursuant to Section 151.020. That value was obtained by application of an allowable depreciation of five percent per year with a maximum of 75 percent against the original cost. To the resulting figure, \$513,309,877, the factor of 47 percent, used to equalize all railroad property in Missouri, was applied to equalize the total or entire value of N & W rolling stock with the valuation of other properties in Missouri. A percentage was then obtained by determining the proportion the mileage in Missouri, 627.61, bore to the total mileage in the N & W system, 7577.55. The proportion thus obtained, 8.282 percent, was then applied to the equalized value of N & W rolling stock to determine the amount of N & W properly subject to taxation in Missouri. This amount was further adjusted by deduction of an economic factor of \$860,415 from the assessed valuation of fixed and movable property of N & W in Missouri and resulted ultimately in the valuation of N & W rolling stock of \$19,981,757. The total process

thus described constitutes the assessment of N & W, all as required and provided by Section 151.060, and such assessment was made in the same manner as for all other railroads in Missouri.

Appellants introduced evidence before the commission to show that the *average* depreciated, equalized value of rolling stock regularly used in Missouri in 1964 and on January 1, 1965, was \$7,014,723 and that, while 8.2824 percent of all N & W miles were in Missouri, only 2.71 percent of all N & W units having 3.16 percent of the total depreciated, equalized value of N & W rolling stock was in Missouri on January 1, 1965. Such evidence came from exhibits showing the employment by N & W of most of its coal-hauling equipment in hauling coal from Virginia, West Virginia, and Kentucky to the eastern ports and manufacturing centers and to the Great Lakes region. Similar exhibits showed that part of the system originally operated as Wabash to be utilized mainly for hauling general merchandise between Missouri and Iowa and the east, with but a small portion of coal hauling in that area. Exhibits also showed the depreciated values of equipment belonging to the individual railroads prior to the leases and merger which put together the N & W system. These, of course, showed that the bulk of the coal-hauling equipment now in the total system came from those roads which originally served the coal-producing and demanding areas prior to the merger of all the roads into a more comprehensive and diversified system which now employs its entire rolling stock to meet the demands of a larger system serving a greater area. Other exhibits showed that the leases and merger brought about no increase in the average amount of Wabash, N & W, Nickel Plate, and P. & W.V. cars in Missouri.

Use of the average number of units in the state has been held to be a fair method of assessment of interstate rolling stock, *Central R. Co. v. Pennsylvania*, 370 U.S. 607,

Marye v. B. & O. R. Co., 127 U.S. 117, *American Refrigerator Transit Co. v. Hall*, 174 U.S. 70; however, figures thus obtained are not conclusive on whether the N & W assessment for 1965 based on mileage apportionment is unconstitutional, arbitrary, or grossly excessive. Nor are the figures of 2.71 percent of the total rolling stock constituting 3.16 percent of the total value conclusive on the matters of substantially even division of rolling stock and mileage throughout the system because, quite obviously, they do not recognize any justified enhanced or augmented value to the portion actually in Missouri brought about by being merged into the entire N & W system. See *Union Tank Line Co. v. Wright*, *supra*, 249 U.S. 1.c. 282: "While the valuation must be just it need not be limited to mere worth of the articles considered separately but may include as well 'the intangible value due to what we have called the organic relation of the property in the State to the whole system.'" In *Pittsburgh etc. Co. v. Backus*, *supra*, the assessed railroad was created between April 1, 1890, and April 12, 1891, by merger of several existing roads. Prior to the merger, the Indiana portion of the merged property had been assessed at \$8,538,053, and the postmerger assessment was \$22,666,470, approximately the same increase as that involved here. Complaint of unconstitutional valuation was attempted to be supported in much the same manner as here and was answered: "Still, it must be borne in mind that a mere increase in the assessment does not prove that the last assessment is wrong. Something more is necessary before it can be adjudged that the assessment is illegal and excessive, and the question which is to be now considered is whether the testimony shows that the assessment made by the state board can be adjudged illegal." 154 U.S. 1.c. 432.

Much of appellants' argument is based on comparisons of the Missouri portion of the original Wabash system to the total Wabash system prior to the lease to N & W, but surely the parties to the leases and merger thought that

the merged system would be more valuable than its component parts. Otherwise, common sense would suggest they remain as separate, smaller, nonintegrated entities, and it makes equally good sense for the coal-hauling equipment to be continued in the area where it is most needed. Consideration of the total value of N & W rolling stock, including its coal-hopper cars and coal-region diesel engines, in arriving at the valuation of that part of the N & W system in Missouri is not like the situations presented, for example, in *Wallace v. Hines, supra*, where the cost of building railroads in neighboring mountain states was out of proportion to the cost of construction in North Dakota, the taxing state; in *Union Tank Line Co. v. Wright, supra*, where the number of cars of a New Jersey tank-line company claimed by Georgia bore no relation to the percentage Georgia's railroads bore to all railroads in the country; in *Fargo v. Hart, supra*, where bonds of an express company in New York bore no relation to the valuation of the company's express business in Indiana; and in *Pittsburgh etc. R. Co. v. Backus, supra*, recognizing the exceptional case of terminals of enormous value in one city out of all proportion to any other distance on the line, and the use in certain localities of a particular kind of business requiring an extra amount of rolling stock for that part of the line only. An example of the last suggestion might be the employment in a mining operation of narrow gauge rails and cars which could not be used throughout the entire system.

Appellants' figures also showed that the depreciated value of rolling stock previously owned by Wabash alone would be \$82,456,813, as compared to \$241,255,643 for the entire merged system. They concede that if, on the 1965 return, the commission had applied the formula to the Wabash part of the system and properties alone, the assessment would have amounted to \$10,103,340. Certainly, no unconstitutional disproportion is revealed in an assessment of \$19,981,757 against a total valuation of

\$241,255,643, when compared to \$10,103,340 assessed against \$82,456,813, and such proportion in no way approaches the differential of 600 percent criticized in *Union Tank Line Co. v. Wright, supra*. See also *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362, where an assessment of \$23,996,604.14 was held not excessive in comparison to the railroad's figure of \$16,021,296.

The decision of the state tax commission must, of course, be supported by competent and substantial evidence upon the whole record. *Drey v. State Tax Commission, Mo.*, 345 S.W. 2d 228. In this case the decision receives ample support from those items taken directly from appellants' statutory return of properties used in connection with mileages both within and without Missouri, "habitually, constantly and regularly used as an essential part of Norfolk and Western Railway Company within the meaning of Section 151.060." The evidence was also such as to give the commission substantial knowledge and information on the scope and type of operation conducted by N & W as well as the manner in which the operation measured by the Missouri mileage fits into the entire N & W scheme. Under the authorities that is sufficient because "(t)here is no such thing in assessments as an absolute 'true value,' and an assessment is, at best, a mere estimate; a presumption exists that the assessed valuation is correct, and the courts have no right to substitute their judgments, as such, for the values fixed by the assessor or by reviewing boards * * * and a taxpayer has the burden of establishing a discrimination." *Cupples Hesse v. State Tax Commission, Mo.*, 329 S.W. 2d 696, 700[3-6]. Such presumption is rebuttable, of course, *Koplar v. State Tax Commission, Mo.*, 321 S.W. 2d 686, 693[3], but it is not sufficient to assert that use of the track formula alone could well result in a "figure approximating the value of the property actually in the state" without demonstrating that or similar situation to be the case. The commission noted in its decision its prerogative of judging credibility of witnesses,

and it was free to weigh, determine relevancy, and disbelieve appellants' evidence on the issues presented. *May Dept. Stores Co. v. State Tax Commission, Mo.*, 308 S.W. 2d 748, 761[16]. It is not necessary to analyze further all the evidence or to point out all the permissible inferences, it being sufficient to say that a formula alone was not the only item available to the commission's consideration. "The noted evidence and its reasonably permissible inferences establishes the presence of other factors and, in short, substantially supports the order and finding of the commission." *State v. State Tax Commission, Mo.*, 384 S.W. 2d 565, 568[7].

Judgment affirmed.

ANDREW JACKSON HIGGINS, *Commissioner.*

HOUSER, C., not participating.

WELBORN, C., concurs.

PER CURIAM: The foregoing opinion by Higgins, C., is adopted as the opinion of the court.

HENLEY, HYDE, J. J., STORCKMAN, Alt. J., concur.

HOLMAN, P. J., not sitting.

**APPELLANTS' EXHIBITS BEFORE THE MISSOURI STATE
TAX COMMISSION**

Exhibit 5

**WABASH, NORFOLK AND WESTERN, NICKEL
PLATE AND P&WV CARS ON LINE IN
STATE OF MISSOURI**

Date	Number of Cars on Line in Missouri
February 1, 1964	1,908
March 1, 1964	2,187
April 1, 1964	1,874
May 1, 1964	1,843
June 1, 1964	2,143
July 1, 1964	2,446
August 1, 1964	2,159
September 1, 1964	2,487
October 1, 1964	2,336
November 1, 1964	1,967
December 1, 1964	1,873
January 1, 1965	2,213
Average Number of Cars on Line for 12-month period ending Jan. 1, 1965	2,120
February 1, 1965	1,717
March 1, 1965	2,022
April 1, 1965	1,913
Average Number of Cars on Line 1st quarter 1965	1,887
Average Number of Cars on Line 1st quarter 1964	1,989

Exhibit 6

ASSOCIATION OF AMERICAN RAILROADS
 OPERATIONS AND MAINTENANCE DEPARTMENT
 CAR SERVICE DIVISION
 TRANSPORTATION BUILDING
 WASHINGTON, D. C. 20006

June 8, 1965

CORRECTED**SPECIAL CAR ORDER NO. C-411—REVISED**

To: Transportation Officers, All Railroad and Terminal Switch Lines.

EFFECTIVE: June 12, 1965, and continuing until further notice.

APPLICATION: To hopper cars of C&O, L&N-NC&STL and N&W-VGN-NKP-PWV-WAB ownerships developing empty in states east of the Mississippi River and west of the six New England states.

ORDER: Hopper cars of above ownerships developing in the designated areas must be excluded from all loading and returned empty to home lines. When used for train lot shipments of coal (unit trains) from owners, cars must be returned via reverse of loaded route as directed in Special Car Order C-526.

EXCEPTION: Cars of ownerships covered by this order may be used by other than owners for loading only when authorized by the Car Service Division or by owners. The Car Service Division must be advised by owners of such arrangements.

NOTE: Cars of foreign marks developing on roads named in this order may be used only for loading to or via owners' rails or for other loading when authorized by the Car Service Division or by owners. The Car Service Division must be advised by owners of any authorization for such use of their cars.

Please acknowledge.

Very truly yours,

E. P. MILLER

Lists: CS-1, 1A, 1B, DMs, CSAs.

Disregard stencil 1153 if received. This stencil contains a minor correction in the **EXCEPTION**.

Exhibit 9

**LOCOMOTIVES OWNED BY NORFOLK
AND WESTERN
(EXCLUSIVE OF NEW YORK, CHICAGO &
ST. LOUIS (NICKEL PLATE))**

AS OF JANUARY 1, 1965

Year of Acquisition	Units	Original Cost	Depreciated Value *
1954	28	\$ 5,839,416	\$ 2,627,737
1955	24	3,976,927	1,988,464
1956	49	8,815,925	4,848,759
1957	128	25,179,674	15,107,804
1958	78	15,208,784	9,885,710
1959	202	36,315,508	25,420,856
1960	16	3,100,096	2,325,072
1961	30	5,862,036	4,689,629
1962	50	10,803,212	9,182,730
1963	15	3,279,210	2,951,289
1964	65	9,648,814	9,166,373
TOTAL	685	\$128,029,602	\$88,194,423

* Depreciated according to Missouri State Tax Commission rates.

Exhibit 11

**LOCOMOTIVES FORMERLY OWNED BY NEW YORK,
CHICAGO & ST. LOUIS (NICKEL PLATE) AND
NOW OWNED BY NORFOLK AND WESTERN**

AS OF JANUARY 1, 1965

Year of Acquisition	Units	Original Cost	Depreciation Value *
1950 and Prior	56	\$ 5,143,433	\$ 1,285,858
1951	35	3,897,978	1,169,393
1952	26	2,530,854	885,799
1953	49	6,604,696	2,641,878
1954	23	3,401,310	1,530,590
1955	38	6,223,915	3,111,958
1956	27	4,386,712	2,412,692
1957	36	7,101,545	4,260,927
1958	40	6,447,674	4,190,988
1959	39	6,890,831	4,823,582
1960	15	2,635,382	1,976,537
1961	—	—	—
1962	21	3,967,360	3,372,256
1963	—	—	—
1964	2	383,623	364,442
Total	407	\$59,615,313	\$32,026,900

* Depreciated according to Missouri State Tax Commission rates.

Exhibit 12

HOPPER CARS OWNED BY NORFOLK AND
WESTERN AS OF JAN. 1, 1965
(EXCLUDING THOSE FORMERLY OWNED BY
NEW YORK, CHICAGO & ST. LOUIS
(NICKEL PLATE))

COAL HOPPER CARS

Year of Acquisition	Units	Original Cost	Depreciation Value *
1950 and Prior	21,428	\$ 60,152,727.28	\$ 15,038,181.82
1951	2,522	12,523,270.00	3,756,981.00
1952	1,907	9,822,221.00	3,437,777.35
1953	1,920	10,544,735.45	4,217,894.18
1954	None	—	—
1955	74	482,647.24	241,323.62
1956	4,641	33,867,497.02	18,627,123.36
1957	5,889	46,176,487.57	27,705,892.54
1958	2,402	19,314,661.36	12,554,529.88
1959	1,532	12,294,493.00	8,606,145.10
1960	2,664	19,035,495.66	14,276,621.75
1961	1,254	13,204,971.00	10,563,976.80
1962	1,863	18,774,671.20	15,958,470.52
1963	4,234	35,593,418.76	32,034,076.88
1964	6,325	47,940,054.50	45,543,051.78
	58,655	\$339,727,351.04	\$212,562,046.58

* Depreciated in accordance with Missouri State Tax Commission rates.

Exhibit 13

LOCATION OF COAL (OPEN) HOPPER CARS

	Wabash Hopper Cars on Wabash Lines	NKP Hopper Cars on NKP Lines	Norfolk and Western Hopper Cars on Lines of Norfolk and Western other than Wabash and NKP
Jan. 1, 1963	572	4,220	45,542
Feb. 1, 1963	682	4,493	44,486
March 1, 1963	660	4,209	43,716
April 1, 1963	632	3,870	43,668
May 1, 1963	525	3,261	39,715
June 1, 1963	550	2,480	37,680
July 1, 1963	564	2,263	38,115
August 1, 1963	600	2,886	41,201
Sept. 1, 1963	621	2,665	41,067
Oct. 1, 1963	623	2,667	40,660
Nov. 1, 1963	618	2,817	41,869
Dec. 1, 1963	622	2,829	44,911
Jan. 1, 1964	621	2,993	47,502
Feb. 1, 1964	625	3,488	46,850
March 1, 1964	650	3,041	47,694
April 1, 1964	632	3,481	46,369
May 1, 1964	636	2,984	45,102
June 1, 1964	634	2,154	39,417
July 1, 1964	641	1,924	42,830
August 1, 1964	653	2,586	45,356
Sept. 1, 1964	657	2,330	40,706
Oct. 1, 1964	656	2,042	40,765
Nov. 1, 1964	672 *	2,941 *	38,755 *
Dec. 1, 1964	675 *	3,301 *	41,269 *
Jan. 1, 1965	672 *	3,336 *	45,698 *

* Wabash, Norfolk and Western and NKP cars are included for months of Nov. 1, 1964, Dec. 1, 1964 and Jan. 1, 1965, only, and are not included in the other months.

NKP — New York, Chicago & St. Louis Railroad (Nickel Plate).

Exhibit 14

NORFOLK AND WESTERN HOPPER CARS IN
MISSOURI ON LINE AND OFF LINE ON
DEC. 1, 1964 AND JAN. 1, 1965

(excluding Wabash and former New York, Chicago &
St. Louis (Nickel Plate))

HOPPER CARS — OPEN TOP — AS OF DEC. 1, 1964

Year of Acquisition	Units	Original Cost	Depreciated Value *
1950 and Prior	74	\$225,584	\$ 56,396
1951	16	79,123	23,737
1952	8	41,697	14,594
1953	5	27,375	10,950
1954	—	—	—
1955	—	—	—
1956	17	124,571	68,514
1957	14	108,909	65,345
1958	8	65,393	42,505
1959	3	30,769	21,538
1960	7	58,582	43,937
1961	2	20,898	16,718
1962	6	63,086	53,623
1963	4	12,422	11,180
1964	1	10,431	9,909
	<hr/> 165	<hr/> \$868,840	<hr/> \$438,946

* Depreciated in accordance with Missouri State Tax Commission rates.

Exhibit 14 (Continued)**HOPPER CARS — OPEN TOP — AS OF JAN. 1, 1965**

Year of Acquisition	Units	Original Cost	Depreciated Value *
1950 and Prior	76	\$221,684	\$ 55,421
1951	9	44,112	13,234
1952	2	10,329	3,615
1953	4	32,775	13,110
1954	—	—	—
1955	—	—	—
1956	8	99,070	54,489
1957	16	126,164	75,698
1958	18	145,848	94,801
1959	2	16,094	11,266
1960	4	27,208	20,406
1961	2	21,126	16,901
1962	2	20,905	17,769
1963	8	74,725	67,253
1964	4	9,196	8,736
	<u>155</u>	<u>\$849,236</u>	<u>\$452,699</u>

* Depreciated in accordance with Missouri State Tax Commission rates.

Exhibit 17

**COAL SHIPMENTS BY NORFOLK AND WESTERN
ORIGINATING IN WEST VIRGINIA, VIRGINIA,
KENTUCKY AND OHIO, SHOWING DESTINATION
BY AREAS AND STATES**

Year 1964 (in tons)

Destination		
Tidewater	24,868,281	
Lakes Docks	12,763,787	
River Docks	6,255,395	
All-Rail	31,045,537	
Total	74,933,000	
	Alabama	612,285
	California	31,747)
	Colorado	168,242)
	Connecticut	736
	Delaware	36,542
	D. C.	280,440
	Florida	292
	Georgia	25,578
	Illinois	5,241,976
	Indiana	622,392
	Iowa	29,538
	Maine	205
	Maryland	746,241
	Massachusetts	22,858
	Michigan	1,911,263
	Minnesota	2,518
	New Hampshire	4,186
	New Jersey	12,877
	New York	381,487
	North Carolina	4,621,234
	Ohio	5,931,507
	Pennsylvania	195,673
	Rhode Is.	2,999
	South Carolina	632,483
	Tennessee	247,998
	Vermont	3,176
	Virginia	8,920,191
	West Va.	166,461
	Wisconsin	121,371
	Canada	69,468
	Unaccounted for	1,523

equals .0026 of
total tonnage

Exhibit 18

**OPEN TOP HOPPER CARS FORMERLY OWNED
AND LEASED BY NEW YORK, CHICAGO &
ST. LOUIS (NICKEL PLATE) AND NOW OWNED
OR LEASED BY NORFOLK AND WESTERN
AS OF JAN. 1, 1965**

HOPPER CARS — OPEN TOP

Year Acquired	No. of Units	Original Cost	Depreciated Value *
1950 and Prior	4,834	\$15,887,198	\$3,971,800
1964	500	5,505,233	5,229,971
TOTAL	5,334	\$21,392,431	\$9,201,771

* Depreciated according to Missouri State Tax Commission rates

Exhibit 19

**COAL HOPPER CARS FORMERLY OWNED AND
LEASED BY NEW YORK, CHICAGO & ST. LOUIS
(NICKEL PLATE) AND NOW OWNED BY
NORFOLK AND WESTERN, AND WHICH WERE
IN MISSOURI ON LINE AND OFF LINE ON
DEC. 1, 1964 AND JAN. 1, 1965**

COAL HOPPER CARS — AS OF DEC. 1, 1964

Year of Acquisition	Units	Original Cost	Depreciated Value *
1950 and Prior	18	\$60,935	\$15,234
1964	3	33,960	32,262
	<hr/> 21	<hr/> \$94,895	<hr/> \$47,496

COAL HOPPER CARS — AS OF JAN. 1, 1965

Year of Acquisition	Units	Original Cost	Depreciated Value *
1950 and Prior	6	\$19,397	\$ 4,849
1964	2	14,801	14,060
	<hr/> 8	<hr/> \$34,198	<hr/> \$18,909

* Depreciated in accordance with Missouri State Tax Commission rates.

Depreciated value of locomotives owned by Norfolk and Western as of 1/1/65	\$ 88,194,423
Depreciated value of locomotives formerly owned by Nickel Plate RR as of 1/1/65	32,026,900
Depreciated value of Norfolk and Western hopper cars as of 1/1/65	212,562,046
Depreciated value of hopper cars formerly owned and leased by Nickel Plate RR as of 1/1/65	9,201,771
Depreciated value of Norfolk and Western work equipment as of 1/1/65	2,281,810
Depreciated value of work equipment formerly owned by Nickel Plate RR as of 1/1/65	713,332
Depreciated value of Norfolk and Western passenger equipment as of 1/1/65	1,290,026
	<hr/>
	\$346,270,308

Estimated depreciated value of daily average number of Norfolk and Western hopper cars which might have been in Missouri during 1964	597,960
Estimated depreciated value of daily average number of former Nickel Plate hopper cars which might have been in Missouri during 1964	36,225

634,185

\$345,636,123

\$513,309,877

Exhibit 24

Depreciated Value of all Rolling
Stock used, owned or leased by
Norfolk and Western \$513,309,877

Allocation of value to Missouri in
proportion to miles of road owned,
leased or controlled in Missouri
to all other road leased, owned
or controlled by Norfolk and
Western $627.61/7,577.55 =$
 $8.2824 \times 513,309,879 =$ \$ 42,514,377

Ton Miles of freight handled for
each mile of Norfolk and West-
ern's 7,577.55 road miles in the
year 1964 * 6,036,000 per mile

Ton Miles handled in Missouri for
each mile of road in Missouri = 3,262,000 per mile

Percentage of ton miles carried in
Missouri of the average per mile
of all the miles of road owned,
leased or controlled by Norfolk
and Western 54.04%

$54.04 \times \$42,514,377 =$ \$ 22,974,769

$47\% \text{ of } \$22,974,769 =$ \$ 10,798,141

TOTAL ROLLING STOCK OWNED OR LEASED BY NORFOLK & WESTERN RY. CO. IN STATE OF MISSOURI ON JANUARY 1, 1956

Year of Acquisition		1950 and Prior	1951	1952	1953	1954	1955	
<i>Freight Cars</i>								
Leased from Wabash R.R. Co.	Cost	\$ 3,006,049	\$ 378,258	\$ 265,498	\$ 526,731	\$ 250,860	\$ 170,189	\$1,
	Units	968	67	41	68	30	21	
Former N.K.P. R.R. Co.	Cost	\$ 674,346	\$ 6,753				\$ 27,171	\$
	Units	204	1				3	
Former P. & W. V. R.R. Co.	Cost	\$ 20,775						
	Units	5						
N. & W. Ry. Co.	Cost	\$ 691,179	\$ 110,844	\$ 109,834	\$ 213,139	\$ 61,188	\$ 94,277	\$
	Units	237	22	20	37	14	13	
Total Cost		\$ 4,392,349	\$ 495,855	\$ 375,332	\$ 739,870	\$ 312,048	\$ 291,637	\$1,
	Units	1,414	90	61	105	44	37	
Condition Per Cent		25	30	35	40	45	50	
Depreciated Value		\$ 1,098,087	\$ 148,757	\$ 131,366	\$ 295,948	\$ 140,422	\$ 145,819	\$
<i>Diesel Locomotives</i>								
Leased from Wabash R.R. Co.	Cost	\$ 4,603,808	\$2,744,230	\$1,190,823	\$ 981,951	\$ 512,359		\$
	Units	33	18	8	8	3		
Condition Per Cent		25	30	35	40	45		
Depreciated Value		\$ 1,150,952	\$ 823,269	\$ 416,788	\$ 392,780	\$ 230,562		\$
<i>Work Equipment</i>								
Leased from Wabash R.R. Co.	Cost	\$ 276,486		\$ 4,902	\$ 8,679	\$ 1,369	\$ 1,402	\$
	Units	77		3	3	1	1	
Condition Per Cent		25		35	40	45	50	
Depreciated Value		\$ 69,122		\$ 1,716	\$ 3,472	\$ 616	\$ 701	\$
<i>Passenger Train Cars</i>								
Leased from Wabash R.R. Co.	Cost	\$ 2,414,032		\$ 256,700				
	Units	37		1				
Condition Per Cent		25		35				
Depreciated Value		\$ 603,508		\$ 89,845				
<i>Pullman Cars</i>								
Leased from Wabash R.R. Co.								
None								
<i>Grand Total</i>								
	Cost	\$11,686,675	\$3,240,085	\$1,827,757	\$1,730,500	\$ 825,776	\$ 293,039	\$1,
	Units	1,561	108	73	116	48	38	
Depreciated Value		\$ 2,921,669	\$ 972,026	\$ 639,715	\$ 692,200	\$ 371,600	\$ 146,520	\$

JANUARY 1, 1965

Exhibit 25

100

	1956	1957	1958	1959	1960	1961	1962	1963	1964	Total
189	\$1,074,949	\$1,427,000	\$ 299,580	\$ 683,393	\$ 343,249	\$ 296,000	\$ 476,713	\$ 796,568	\$ 739,038	\$10,734,075
21	115	151	31	61	35	32	77	297	110	2,104
171	\$ 230,272	\$ 7,390		\$ 24,611	\$ 278,187		\$ 13,544	\$ 139,784	\$ 393,630	\$ 1,795,688
3	24	1		2	23		1	25	31	315
										\$ 20,775
										5
277	\$ 226,977	\$ 133,199	\$ 152,323	\$ 60,122	\$ 252,980	\$ 69,614	\$ 76,403	\$ 143,074	\$ 10,533	\$ 2,411,686
13	29	17	19	5	26	6	15	12	6	478
637	\$1,532,198	\$1,567,589	\$ 457,903	\$ 768,126	\$ 874,416	\$ 365,614	\$ 566,660	\$1,079,426	\$1,143,201	\$14,962,224
37	168	169	50	68	84	38	93	334	147	2,902
50	55	60	65	70	75	80	85	90	95	
819	\$ 842,709	\$ 940,553	\$ 297,637	\$ 537,688	\$ 655,812	\$ 292,491	\$ 481,661	\$ 971,483	\$1,086,041	\$ 8,066,474
	\$ 182,342	\$ 124,910				\$ 30,527		\$2,013,894	\$2,004,258	\$14,389,102
	1	1				1		9	13	95
	55	60				80		90	95	
	\$ 100,288	\$ 74,946				\$ 24,422		\$1,812,505	\$1,404,045	\$ 6,930,557
402	\$ 44,028	\$ 3,057	\$ 20,208			\$ 11,327	\$ 25,476		\$ 30,960	\$ 427,894
1	33	2	2			16	38		6	182
50	55	60	65			80	85		95	
701	\$ 24,215	\$ 1,834	\$ 13,135			\$ 9,062	\$ 21,655		\$ 29,412	\$ 174,940
		\$ 76,429	\$ 310,428					\$ 65,530	\$ 61,563	\$ 3,184,682
		1	6					4	3	52
		60	65					90	95	
		\$ 45,857	\$ 201,778					\$ 58,977	\$ 58,484	\$ 1,058,449
										None
089	\$1,758,568	\$1,771,985	\$ 788,539	\$ 768,126	\$ 874,416	\$ 407,468	\$ 592,136	\$3,158,850	\$3,239,982	\$32,963,902
88	202	173	58	68	84	55	131	347	169	3,231
520	\$ 967,212	\$1,063,190	\$ 512,550	\$ 537,688	\$ 655,812	\$ 325,975	\$ 503,316	\$2,842,965	\$3,077,982	\$16,230,420
										47%
										\$ 7,628,297

Equalization factor
used by Mo. State
Tax Commission

TOTAL ROLLING STOCK OWNED OR LEASED BY WABASH R.R. CO. IN STATE OF MISSOURI ON APRIL 1, 1964

Year of Acquisition		1950 and Prior	1951	1952	1953	1954	1955	1956	1957	1958
<i>Freight Cars</i>										
	Cost	\$ 3,298,101	\$ 452,014	\$ 371,859	\$ 497,462	\$ 247,460	\$ 290,846	\$ 1,090,868	\$ 1,584,143	\$ 323,038
	Units	1,071	86	59	68	34	36	124	172	5
	Condition Per Cent	25	30	35	40	45	50	55	60	6
	Depreciated Value	\$ 824,525	\$ 135,604	\$ 130,151	\$ 198,985	\$ 111,357	\$ 145,423	\$ 599,977	\$ 950,486	\$ 210,000
<i>Diesel Locomotives</i>										
	Cost	\$ 6,206,815	\$ 1,989,281	\$ 1,900,141	\$ 873,228	\$ 683,144		\$ 336,823		
	Units	45	13	12	7	4		2		
	Condition Per Cent	25	30	35	40	45		55		
	Depreciated Value	\$ 1,551,704	\$ 596,784	\$ 665,049	\$ 349,291	\$ 307,415		\$ 185,253		
<i>Work Equipment</i>										
	Cost	\$ 290,513	\$ 1,473	\$ 4,216	\$ 8,679	\$ 2,741	\$ 1,402	\$ 39,624	\$ 3,057	\$ 20,200
	Units	84	1	3	3	2	1	30	2	
	Condition Per Cent	25	30	35	40	45	50	55	60	
	Depreciated Value	\$ 72,628	\$ 442	\$ 1,476	\$ 3,472	\$ 1,233	\$ 701	\$ 21,793	\$ 1,834	\$ 13,110
<i>Passenger Train Cars</i>										
	Cost	\$ 1,319,181		\$ 256,700					\$ 76,429	\$ 258,600
	Units	23		1					1	
	Condition Per Cent	25		35					60	
	Depreciated Value	\$ 329,795		\$ 89,845					\$ 45,857	\$ 168,100
<i>Pullman Cars</i>										
	Cost						\$ 196,144			
	Units						1			
	Condition Per Cent						50			
	Depreciated Value						\$ 98,072			
<i>Grand Total</i>										
	Cost	\$ 11,114,610	\$ 2,442,768	\$ 2,532,916	\$ 1,379,369	\$ 933,345	\$ 488,392	\$ 1,467,315	\$ 1,663,629	\$ 601,100
	Units	1,223	100	75	78	40	38	156	175	
	Depreciated Value	\$ 2,778,652	\$ 732,830	\$ 886,521	\$ 551,748	\$ 420,005	\$ 244,196	\$ 807,023	\$ 998,177	\$ 391,100

	1956	1957	1958	1959	1960	1961	1962	1963	1964	Total
5	\$1,090,868	\$1,584,143	\$ 323,080	\$ 555,998	\$ 404,132	\$ 231,250	\$ 322,457	\$ 768,674	\$ 554,239	\$10,992,583
5	124	172	34	54	38	26	45	276	88	2,211
0	55	60	65	70	75	80	85	90	95	
3	\$ 599,977	\$ 950,486	\$ 210,002	\$ 389,199	\$ 303,099	\$ 185,000	\$ 274,088	\$ 691,807	\$ 526,527	\$ 5,676,230
	\$ 336,823					\$ 30,527	\$1,566,362		\$ 910,113	\$14,496,434
	2					1	7		5	96
	55					80	85		95	
	\$ 185,253					\$ 24,422	\$1,331,408		\$ 864,607	\$ 5,875,933
2	\$ 39,624	\$ 3,057	\$ 20,208		\$ 18,609		\$ 25,455		\$ 30,960	\$ 446,937
1	30	2	2		27		38		6	199
0	55	60	65		75		85		95	
1	\$ 21,793	\$ 1,834	\$ 13,135		\$ 13,957		\$ 21,637		\$ 29,412	\$ 181,720
		\$ 76,429	\$ 258,690	\$ 36,867				\$ 48,290		\$ 1,996,157
		1	5	3				2		35
		60	65	70				90		
		\$ 45,857	\$ 168,149	\$ 25,807				\$ 43,461		\$ 702,914
										\$ 196,144
										1
										\$ 98,072
2	\$1,467,315	\$1,663,629	\$ 601,978	\$ 592,865	\$ 422,741	\$ 261,777	\$1,914,274	\$ 816,964	\$1,495,312	\$28,128,255
3	156	175	41	57	65	27	90	278	99	2,542
5	\$ 807,023	\$ 998,177	\$ 391,286	\$ 415,006	\$ 317,056	\$ 209,422	\$1,627,133	\$ 735,268	\$1,420,546	\$12,534,869
										47%
										\$ 5,891,388

Equalization factor
used by Mo. State
Tax Commission.

TOTAL ROLLING STOCK OWNED OR LEASED BY WABASH R.R. CO. IN STATE OF MISSOURI ON JULY 1, 1964

Year of Acquisition		1950 and Prior	1951	1952	1953	1954	1955	1956	1957	
<i>Freight Cars</i>										
	Cost	\$ 4,209,944	\$ 517,219	\$ 662,329	\$ 637,489	\$ 258,632	\$ 167,699	\$1,040,213	\$1,576,191	\$
	Units	1,333	91	110	80	34	21	120	171	
	Condition Per Cent	25	30	35	40	45	50	55	60	
	Depreciated Value	\$ 1,052,486	\$ 155,166	\$ 231,815	\$ 254,996	\$ 116,384	\$ 83,850	\$ 572,117	\$ 945,715	\$
<i>Diesel Locomotives</i>										
	Cost	\$ 5,889,242	\$2,424,446	\$2,003,809	\$1,288,134	\$ 512,358				
	Units	43	15	13	10	3				
	Condition Per Cent	25	30	35	40	45				
	Depreciated Value	\$ 1,472,311	\$ 727,334	\$ 701,333	\$ 515,254	\$ 230,561				
<i>Work Equipment</i>										
	Cost	\$ 319,456	\$ 6,103	\$ 4,216	\$ 8,679	\$ 2,738	\$ 1,402	\$ 42,928	\$ 3,057	\$
	Units	89	3	3	3	2	1	32	2	
	Condition Per Cent	25	30	35	40	45	50	55	60	
	Depreciated Value	\$ 79,864	\$ 1,831	\$ 1,476	\$ 3,472	\$ 1,232	\$ 701	\$ 23,610	\$ 1,834	\$
<i>Passenger Train Cars</i>										
	Cost	\$ 1,704,541		\$ 256,700					\$ 76,429	\$
	Units	26		1					1	
	Condition Per Cent	25		35					60	
	Depreciated Value	\$ 426,135		\$ 89,845					\$ 45,857	\$
<i>Pullman Cars</i>										
	Cost						\$ 196,144			
	Units						1			
	Condition Per Cent						50			
	Depreciated Value						\$ 98,072			
<i>Grand Total</i>										
	Cost	\$12,123,183	\$2,947,768	\$2,927,054	\$1,934,302	\$ 773,728	\$ 365,245	\$1,083,141	\$1,655,677	\$
	Units	1,491	109	127	93	39	23	152	174	
	Depreciated Value	\$ 3,030,796	\$ 884,331	\$1,024,469	\$ 773,722	\$ 348,177	\$ 182,623	\$ 595,727	\$ 993,406	\$

ON JULY 1, 1964

Exhibit 27

102

1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	Total
\$ 258,632 34	\$ 167,699 21	\$1,040,213 120	\$1,576,191 171	\$ 419,510 45	\$ 779,744 73	\$ 770,313	\$ 518,000 56	\$ 365,215 75	\$1,022,468 322	\$ 870,573 121	\$13,815,539 2,727
\$ 116,384	\$ 83,850	\$ 572,117	\$ 945,715	\$ 272,682	\$ 545,821	\$ 577,735	\$ 414,400	\$ 310,433	\$ 920,221	\$ 827,044	\$ 7,280,865
\$ 512,358 3							\$ 30,527 1	\$1,566,362 7		\$1,838,667 13	\$15,553,545 105
\$ 230,561							\$ 24,422	\$1,331,408		\$1,746,734	\$ 6,749,357
\$ 2,738 2	\$ 1,402 1	\$ 42,928 32	\$ 3,057 2	\$ 20,208 2			\$ 16,623 23	\$ 28,174 40	\$ 2,736 1	\$ 15,480 3	\$ 471,800 204
\$ 1,232	\$ 701	\$ 23,610	\$ 1,834	\$ 13,135			\$ 13,298	\$ 23,948	\$ 2,462	\$ 14,706	\$ 181,569
			\$ 76,429 1	\$ 206,952 4	\$ 12,289 1				\$ 65,248 5	\$ 41,042 2	\$ 2,363,201 40
			\$ 45,857	\$ 134,519	\$ 8,602				\$ 58,723	\$ 38,990	\$ 802,671
	\$ 196,144 1										\$ 196,144 1
	\$ 98,072										\$ 98,072
\$ 773,728 39	\$ 365,245 23	\$1,083,141 152	\$1,655,677 174	\$ 646,670 51	\$ 792,033 74	\$ 770,313 75	\$ 565,150 80	\$1,959,751 122	\$1,090,452 328	\$2,765,762 139	\$32,400,229 3,077
\$ 348,177	\$ 182,623	\$ 595,727	\$ 993,406	\$ 420,336	\$ 554,423	\$ 577,735	\$ 452,120	\$1,665,789	\$ 981,406	\$2,627,474	\$15,112,534 47%
											\$ 7,102,891

Tax Commission
Equalization factor
used by Mo. State

TOTAL ROLLING STOCK OWNED OR LEASED BY WABASH R.R. CO. IN STATE OF MISSOURI ON OCTOBER 1, 1964

Year of Acquisition		1950 and Prior	1951	1952	1953	1954	1955	1956	1957	1958	1959
<i>Freight Cars</i>											
	Cost	\$3,948,551	\$ 608,057	\$ 533,285	\$ 564,433	\$ 318,051	\$ 221,675	\$1,244,627	\$1,436,138	\$ 402,046	\$ 995,768
	Units	1,250	104	88	72	38	28	141	155	41	87
	Condition Per Cent	25	30	35	40	45	50	55	60	65	70
	Depreciated Value	\$ 987,138	\$ 182,417	\$ 186,650	\$ 225,773	\$ 143,123	\$ 110,838	\$ 684,545	\$ 861,683	\$ 261,330	\$ 697,038
<i>Diesel Locomotives</i>											
	Cost	\$ 4,711,335	\$3,110,224	\$1,999,381	\$ 774,410	\$ 170,787		\$ 168,458			
	Units	36	18	13	7	1		1			
	Condition Per Cent	25	30	35	40	45		55			
	Depreciated Value	\$ 1,177,834	\$ 933,067	\$ 699,783	\$ 309,764	\$ 76,854		\$ 92,652			
<i>Work Equipment</i>											
	Cost	\$ 272,038	\$ 1,473	\$ 4,216	\$ 4,279	\$ 1,369		\$ 47,332	\$ 3,057	\$ 20,208	
	Units	91	1	3	2	1		35	2	2	
	Condition Per Cent	25	30	35	40	45		55	60	65	
	Depreciated Value	\$ 68,010	\$ 442	\$ 1,476	\$ 1,712	\$ 616		\$ 26,033	\$ 1,834	\$ 13,135	
<i>Passenger Train Cars</i>											
	Cost	\$ 1,524,333		\$ 256,700					\$ 76,429	\$ 206,952	\$ 49,156
	Units	26		1					1	4	4
	Condition Per Cent	25		35					60	65	70
	Depreciated Value	\$ 381,083		\$ 89,845					\$ 45,857	\$ 134,519	\$ 34,409
<i>Pullman Cars</i>											
	Cost										
	Units		None								
	Condition Per Cent										
	Depreciated Value										
<i>Grand Total</i>											
	Cost	\$10,456,257	\$3,719,754	\$2,793,582	\$1,343,122	\$ 490,207	\$ 221,675	\$1,460,417	\$1,515,624	\$ 629,206	\$1,044,924
	Units	1,403	123	105	81	40	28	177	158	47	91
	Depreciated Value	\$2,614,065	\$1,115,926	\$ 977,754	\$ 537,249	\$ 220,593	\$ 110,838	\$ 803,230	\$ 909,374	\$ 408,984	\$ 731,447

ON OCTOBER 1, 1964

Exhibit 28

103

1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	Total
\$ 318,051 38	\$ 221,675 28	\$1,244,627 141	\$1,436,138 155	\$ 402,046 41	\$ 995,768 87	\$ 447,785 44	\$ 203,500 22	\$ 556,705 85	\$1,120,564 375	\$ 812,432 117	\$13,413,617 2,647
\$ 143,123	\$ 110,838	\$ 684,545	\$ 861,683	\$ 261,330	\$ 697,038	\$ 335,839	\$ 162,800	\$ 473,199	\$1,008,508	\$ 771,810	\$ 7,092,691
\$ 170,787 1		\$ 168,458 1					\$ 30,527 1	\$2,237,660 10		\$2,336,289 14	\$15,539,071 101
\$ 76,854		\$ 92,652					\$ 24,422	\$1,902,011		\$2,219,475	\$ 7,435,862
\$ 1,369 1		\$ 47,332 35	\$ 3,057 2	\$ 20,208 2			\$ 18,609 27	\$ 26,809 39		\$ 18,070 4	\$ 417,460 207
\$ 616		\$ 26,033	\$ 1,834	\$ 13,135			\$ 14,887	\$ 22,788		\$ 17,167	\$ 168,100
			\$ 76,429 1	\$ 206,952 4	\$ 49,156 4				\$ 48,290 2	\$ 41,042 2	\$ 2,202,902 40
			\$ 45,857	\$ 134,519	\$ 34,409				\$ 43,461	\$ 38,990	\$ 768,164
										None	
\$ 490,207 40	\$ 221,675 28	\$1,460,417 177	\$1,515,624 158	\$ 629,206 47	\$1,044,924 91	\$ 447,785 44	\$ 252,636 50	\$2,821,174 134	\$1,168,854 377	\$3,207,833 137	\$31,573,050 2,995
\$ 220,593	\$ 110,838	\$ 803,230	\$ 909,374	\$ 408,984	\$ 731,447	\$ 335,839	\$ 202,109	\$2,397,998	\$1,051,969	\$3,047,442	\$15,464,817 47%
											\$ 7,268,464

Equalization factor
used by Mo. State
Tax Commission

TOTAL ROLLING STOCK OWNED OR LEASED BY NORFOLK & WESTERN RY. CO. IN STATE OF MISSOURI ON DECEMBER 1, 1964

Year of Acquisition		1950 and Prior	1951	1952	1953	1954	1955	1956	1957	1958	1959
Freight Cars											
Leased from Wabash R.R. Co.	Cost	\$ 2,857,176	\$ 339,026	\$ 173,753	\$ 410,555	\$ 240,479	\$ 135,573	\$ 863,201	\$1,045,462	\$ 234,781	\$ 525,140
	Units	946	63	27	53	31	17	94	110	23	51
Former N. K. P. R.R. Co.	Cost	\$ 781,977			\$ 8,665		\$ 40,138	\$ 295,880	\$ 24,331		
	Units	231			1		5	31	3		
Former P. & W. V. R.R. Co.	Cost	\$ 16,679							\$ 9,548		
	Units	4							1		
Norfolk & Western Ry. Co.	Cost	\$ 629,876	\$ 134,733	\$ 152,462	\$ 286,070	\$ 94,305	\$ 49,931	\$ 407,600	\$ 140,493	\$ 90,715	\$ 43,013
	Units	211	25	26	48	14	7	52	18	10	4
	Total Cost	\$ 4,285,708	\$ 473,759	\$ 326,215	\$ 705,290	\$ 334,784	\$ 225,642	\$1,566,681	\$1,219,834	\$ 325,496	\$ 568,153
	Total Units	1,392	88	53	102	45	29	177	132	33	55
Condition Per Cent		25	30	35	40	45	50	55	60	65	70
Depreciated Value		\$ 1,071,427	\$ 142,128	\$ 114,175	\$ 282,116	\$ 150,653	\$ 112,821	\$ 861,675	\$ 731,900	\$ 211,572	\$ 397,707
Diesel Locomotives											
Leased from Wabash R.R. Co.	Cost	\$ 4,636,425	\$2,855,758	\$2,049,600	\$ 794,419	\$ 170,786		\$ 350,800	\$ 124,910		
	Units	36	17	13	8	1		2	1		
Condition Per Cent		25	30	35	40	45		55	60		
Depreciated Value		\$ 1,159,106	\$ 856,727	\$ 717,360	\$ 317,768	\$ 76,854		\$ 192,940	\$ 74,946		
Work Equipment											
Leased from Wabash R.R. Co.	Cost	\$ 235,813		\$ 8,491	\$ 8,679	\$ 1,369	\$ 1,402	\$ 45,680	\$ 3,057	\$ 20,208	
	Units	76		5	3	1	1	34	2	2	
Condition Per Cent		25		35	40	45	50	55	60	65	
Depreciated Value		\$ 58,953		\$ 2,972	\$ 3,472	\$ 616	\$ 701	\$ 25,124	\$ 1,834	\$ 13,135	
Passenger Train Cars											
Leased from Wabash R.R. Co.	Cost	\$ 1,971,678		\$ 256,700					\$ 76,429	\$ 155,214	\$ 12,289
	Units	34		1					1	3	1
Condition Per Cent		25		35					60	65	70
Depreciated Value		\$ 492,920		\$ 89,845					\$ 45,857	\$ 100,889	\$ 8,602
Pullman Cars											
Leased from Wabash R.R. Co.											
None											
Grand Total											
	Cost	\$11,129,624	\$3,329,517	\$2,641,006	\$1,508,388	\$ 506,939	\$ 227,044	\$1,963,161	\$1,424,230	\$ 500,918	\$ 580,442
	Units	1,538	105	72	113	47	30	213	136	38	56
Depreciated Value		\$ 2,782,406	\$ 998,855	\$ 924,352	\$ 603,356	\$ 228,123	\$ 113,522	\$1,079,739	\$ 854,537	\$ 325,596	\$ 406,309

MISSOURI ON DECEMBER 1, 1964

Exhibit 29

104

1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	Total
\$ 240,479 31	\$ 135,573 17	\$ 863,201 94	\$1,045,462 110	\$ 234,781 23	\$ 525,140 51	\$ 225,186 22	\$ 203,500 22	\$ 516,735 112	\$ 812,961 259	\$ 861,842 106	\$ 9,445,370 1,936
	\$ 40,138 5	\$ 295,880 31	\$ 24,331 3			\$ 310,519 26	\$ 13,698 1	\$ 13,544 1	\$ 201,209 31	\$ 406,319 31	\$ 2,096,280 361
			\$ 9,548 1								\$ 26,227 5
\$ 94,305 14	\$ 49,931 7	\$ 407,600 52	\$ 140,493 18	\$ 90,715 10	\$ 43,013 4	\$ 231,867 24	\$ 103,460 9	\$ 128,364 14	\$ 215,915 16	\$ 64,641 5	\$ 2,773,445 483
\$ 334,784 45	\$ 225,642 29	\$1,566,681 177	\$1,219,834 132	\$ 325,496 33	\$ 568,153 55	\$ 767,572 72	\$ 320,658 32	\$ 658,643 127	\$1,230,085 306	\$1,332,802 142	\$14,341,322 2,785
\$ 150,653	\$ 112,821	\$ 861,675	\$ 731,900	\$ 211,572	\$ 397,707	\$ 575,679	\$ 256,526	\$ 559,847	\$1,107,076	\$1,266,162	\$ 7,841,464
\$ 170,786 1		\$ 350,800 2	\$ 124,910 1					\$2,237,660 10		\$1,229,917 10	\$14,450,275 98
\$ 76,854		\$ 192,940	\$ 74,946					\$1,902,011		\$1,168,421	\$ 6,466,133
\$ 1,369 1	\$ 1,402 1	\$ 45,680 34	\$ 3,057 2	\$ 20,208 2			\$ 17,285 25	\$ 24,125 36		\$ 25,800 5	\$ 391,909 190
\$ 45	\$ 50	\$ 55	\$ 60	\$ 65			\$ 80	\$ 85		\$ 95	\$ 165,651
\$ 616	\$ 701	\$ 25,124	\$ 1,834	\$ 13,135			\$ 13,828	\$ 20,506		\$ 24,510	\$ 165,651
			\$ 76,429 1	\$ 155,214 3	\$ 12,289 1				\$ 56,910 3	\$ 20,521 1	\$ 2,549,741 44
			\$ 45,857	\$ 100,889	\$ 8,602				\$ 51,219	\$ 19,495	\$ 808,827
											None
\$ 506,939 47	\$ 227,044 30	\$1,963,161 213	\$1,424,230 136	\$ 500,918 38	\$ 580,442 56	\$ 767,572 72	\$ 337,943 57	\$2,920,428 173	\$1,286,995 309	\$2,609,040 158	\$31,733,247 3,117
\$ 228,123	\$ 113,522	\$1,079,739	\$ 854,537	\$ 325,596	\$ 406,309	\$ 575,679	\$ 270,354	\$2,482,364	\$1,158,295	\$2,478,588	\$15,282,075 47%
											\$ 7,182,575

Equalization factor
used by Mo. State
Tax Commission